91-1420

No. _____

Supreme Court, U.S.
FILED
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In The
Supreme Court of the United States
October Term, 1991

Joan Growe, Secretary of the
State of Minnesota, et al.,
Appellants,

v.

James Emison, et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX TABLE OF CONTENTS[1]

PAGE

1. Maps A-1

EMISON V. GROWE

2. Memorandum Opinion and Order dated February 19, 1992 ..... A-11

3. Judgment, entered February 19, 1992 ..... A-71

4. Plaintiffs' Amended Complaint, dated March 29, 1991 ..... A-73

5. Designation of Three-Judge District Court, dated April 8, 1991 ..... A-92

6. Notice of Three-Judge Panel, dated May 6, 1991 ... A-94

7. Order granting the House and Senate's motion to intervene, dated May 15, 1991 ..... A-95

8. Notice of Pretrial Status and Scheduling Conference, undated A-97

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[1]This appendix contains, inter alia, materials issued by and filed with the United States District Court for the District of Minnesota in *Emison v. Growe*, Civil File No. 4-91-202, and the Minnesota Special Redistricting Panel in *Cotlow v. Growe*, No. C8-91-985. The first federal district court items are the order and judgment from which the Appellants are appealing. The second group of materials relates to *Cotlow v. Growe*. Both the *Emison v. Growe* materials and the *Cotlow v. Growe* materials are presented in chronological order. This third group of materials includes other documents which are pertinent to the Jurisdictional Statement. The final group of materials are those required under Supreme Court Rule 14.1.

9. Order, dated July 23, 1991; filed July 31, 1991 ..... A-99

10. Order for Reassignment of Companion Case, dated August 16, 1991 ..... A-101

11. Order, dated August 21, 1991 ..... A-103

12. Memorandum Opinion, dated August 21, 1991 .... A-106

13. Order Appointing Special Masters, dated August 27, 1991 ..... A-119

14. Order Establishing Master Docket, dated September 25, 1991 ..... A-122

15. Order, dated October 2, 1991 ..... A-125

16. Order Establishing Court Schedule, dated October 4, 1991 ..... A-128

17. Order, dated October 21, 1991 ..... A-132

18. Order for Hearing on Motion for Summary Judgment, dated November 27, 1991 ..... A-138

19. Order of Stay of all Proceedings Pending Before the Minnesota Special Redistricting Panel in *Cotlow v. Growe* No. C8-91-985, dated December 5, 1992 ..... A-141

20. Judgment of United States District Court for the District of Minnesota entered on December 5, 1991 ..... A-160

21. Order, dated January 3, 1992 ..... A-162

22. United States Supreme Court Order, dated January 10, 1992 ..... A-166

23. United States Supreme Court Order, dated January 27, 1992 ..... A-167

24. Order, dated January 31, 1992 ..... A-169

25. Order, dated February 11, 1992 ..... A-172

COTLOW V. GROWE

26. Complaint, dated January 24, 1991 ..... A-174

27. Stipulation, dated February 25, 1991 ..... A-192

28. Order Appointing Judges Lansing, Walker, and Maas, dated June 4, 1991 ..... A-196

29. Pretrial Order No. 1, dated July 29, 1991 ..... A-198

30. Pretrial Order No. 2: Establishing Preliminary Criteria for Legislative Congressional Redistricting, Directing Oral Argument on Reserved Issues, and Setting Comprehensive Timetable, dated August 16, 1991 ..... A-202

31. Pretrial Order No. 3: Establishing Final Criteria for Redistricting, Staying the Time Periods for Local Governmental Units to Redefine Their Local Election Districts, Accelerating Time Schedule for Completing the Legislative Redistricting Plan, Designating Form for Submission of Plans, Granting Motions to Amend Defendant-Intervenors' Complaint and Designating Issues for Oral Argument on September 24, 1991, dated September 13, 1991 ..... A-209

32. Pretrial Order No. 4, dated October 1, 1991 ..... A-218

33. Pretrial Order No. 5, dated November 8, 1991 .... A-227

34. Findings of Fact, Conclusions of Law, and Preliminary Order for Judgment on Legislative Redistricting, dated November 21, 1991 ..... A-234

35. Findings of Fact, Conclusions of Law, and Order for Judgment on Legislative Redistricting, dated December 9, 1991 ..... A-249

36. Order for Entry of Judgment, dated January 30, 1992 ..... A-355

37. Notice of Entry of Judgment, undated A-357

38. Procedural Order No. 6, dated February 6, 1992 ... A-359

OTHER PERTINENT MATERIALS

39. Notice of Appeal to the Supreme Court of the United States, dated February 25, 1992 ..... A-362

40. Letter from the NAACP to the State Court Panel, dated October 15, 1991 ..... A-366

41. Letter from the NAACP to the Federal Court, dated December 5, 1991 ..... A-368

42. Letter from the Secretary of State and Hennepin County Attorney to local units of government, dated January 31, 1992. ..... A-371

43. Constitutional Provisions Involved A-373

44. Statutory Provisions Involved A-374

45. Legislative Resolutions Involved A-376

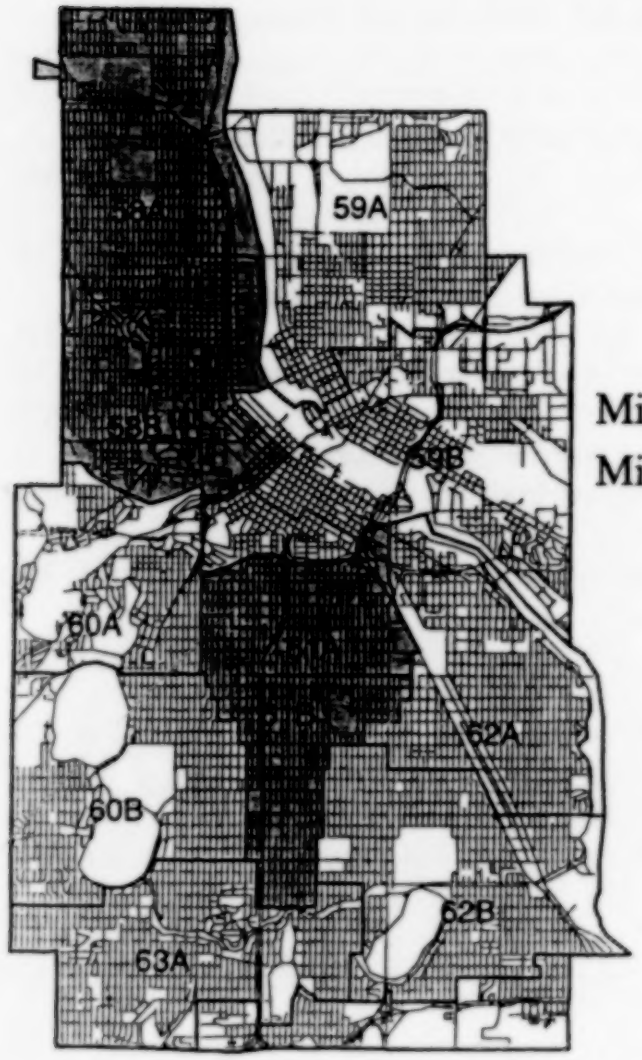
46. Tables A-380

47. Legislative Transcripts A-393

48. *Cotlow v. Growe* Procedural Order No. 7, dated March 3, 1992 ..... A-440

State - Legislative Plan

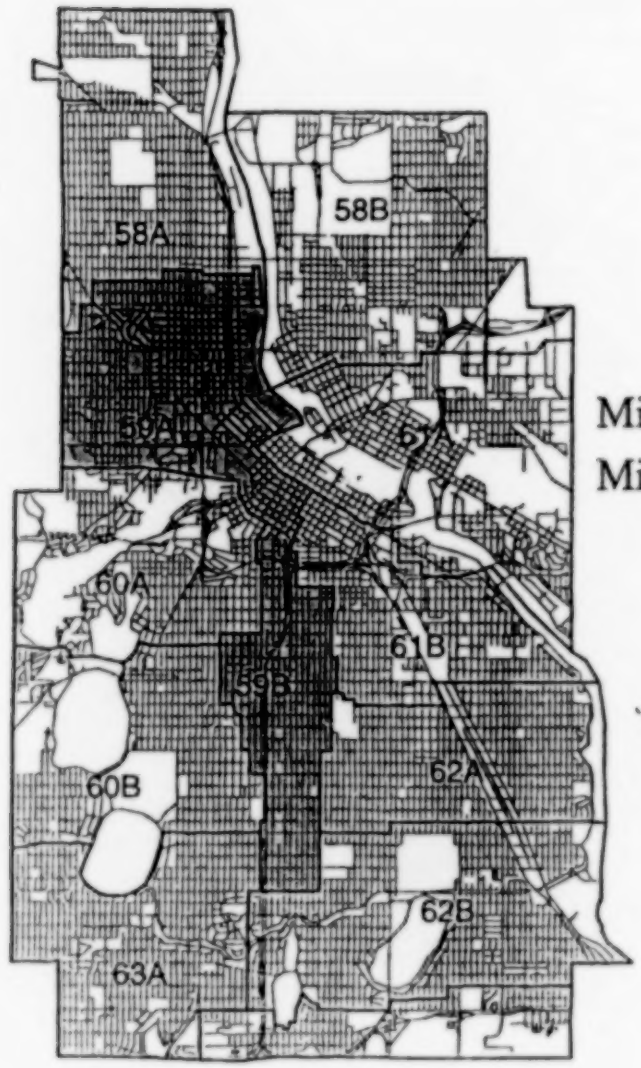
Enacted by Legislature on May 29, 1991
Approved, with corrections, by State Court on December 9, 1991



Minority Districts
Minneapolis

Federal Court - Legislative Plan

February 19, 1992



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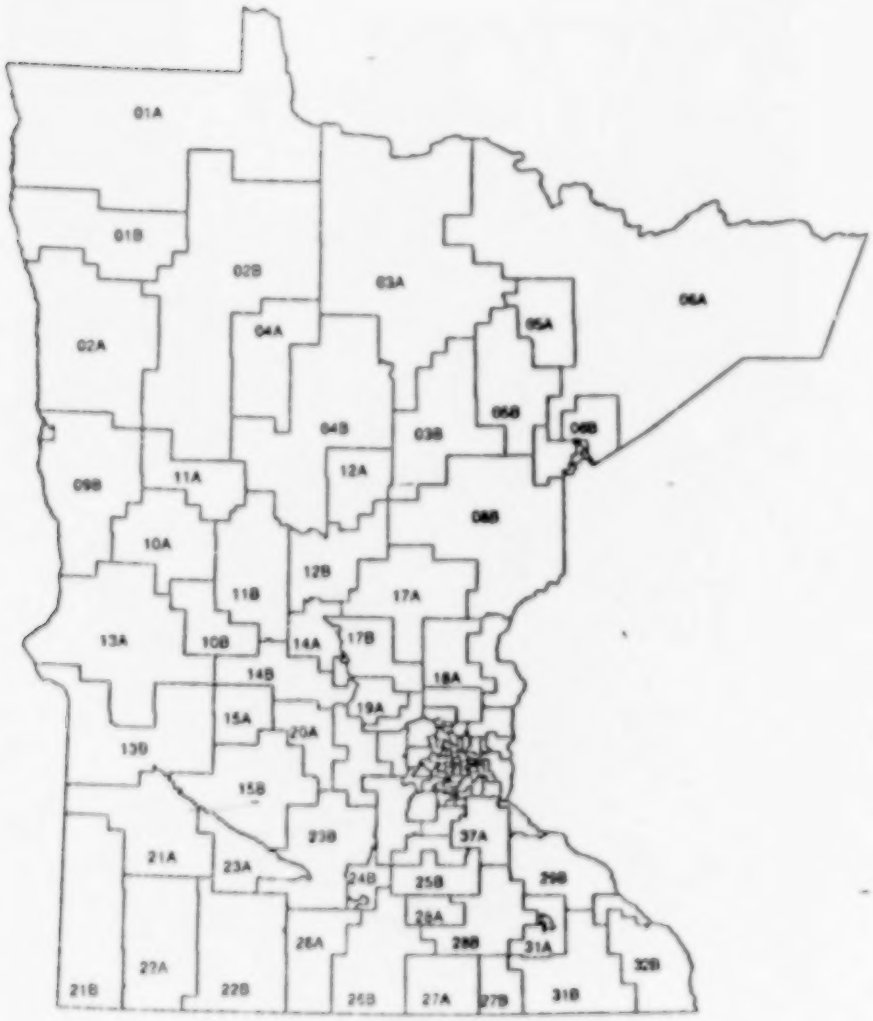
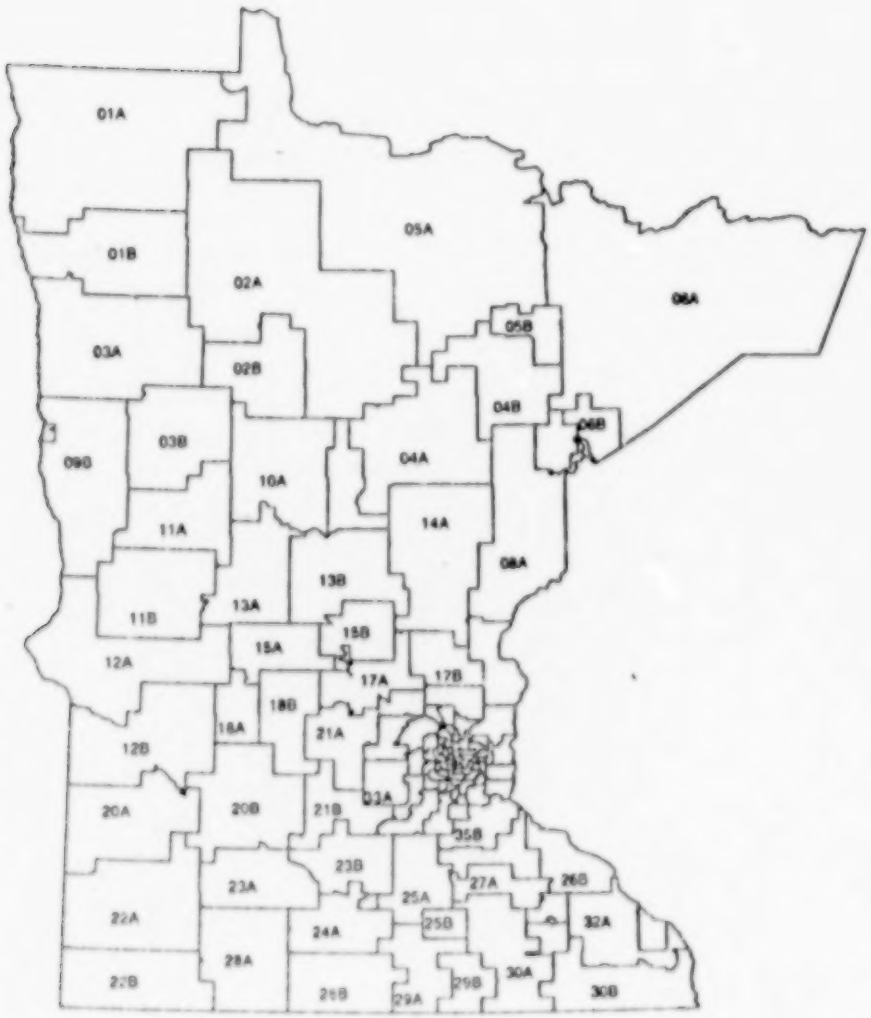


Federal Court - Legislative Plan

February 19, 1992



State - Legislative Plan

Enacted by Legislature on May 29, 1991
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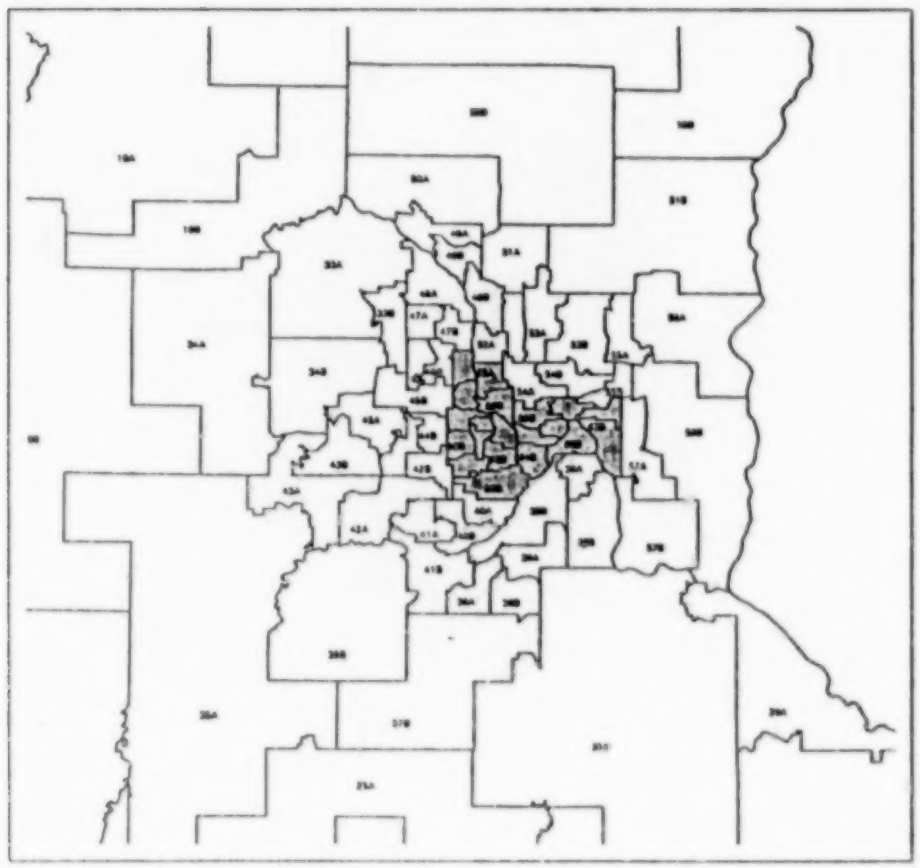
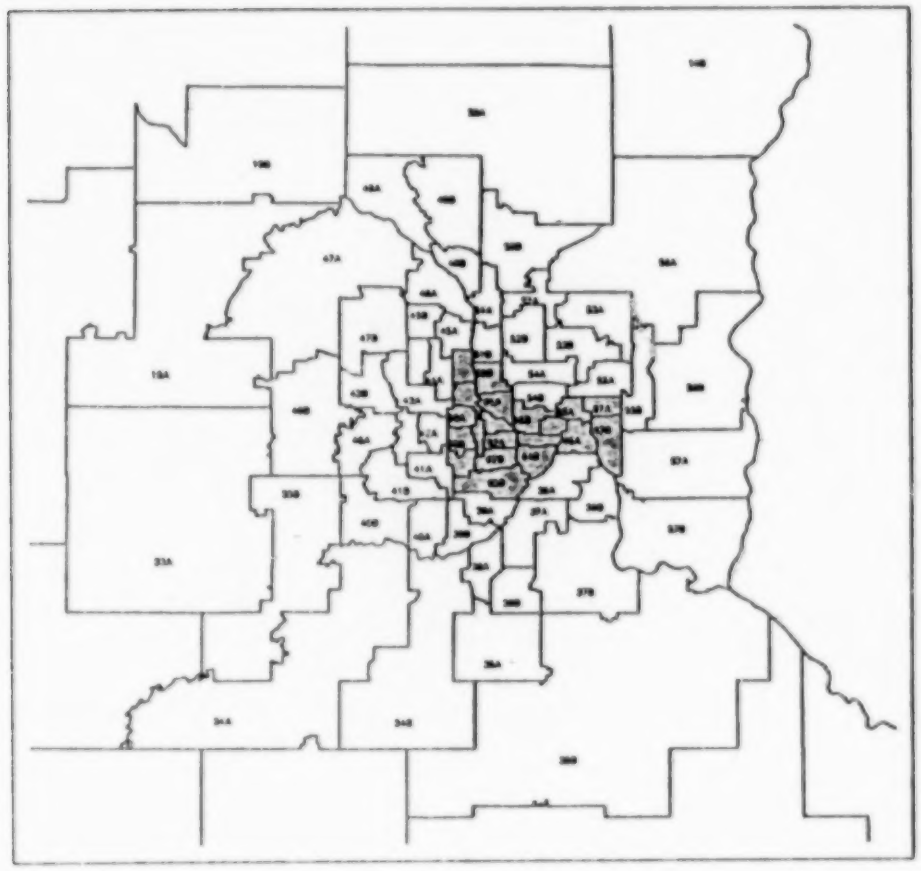
Twin Cities Metro Area
(Minneapolis and St. Paul Districts Shaded)



Federal Court - Legislative Plan

February 19, 1992

Twin Cities Metro Area
(Minneapolis and St. Paul Districts Shaded)



SF 1597 - Congressional Plan

Passed by Legislature on January 9, 1992

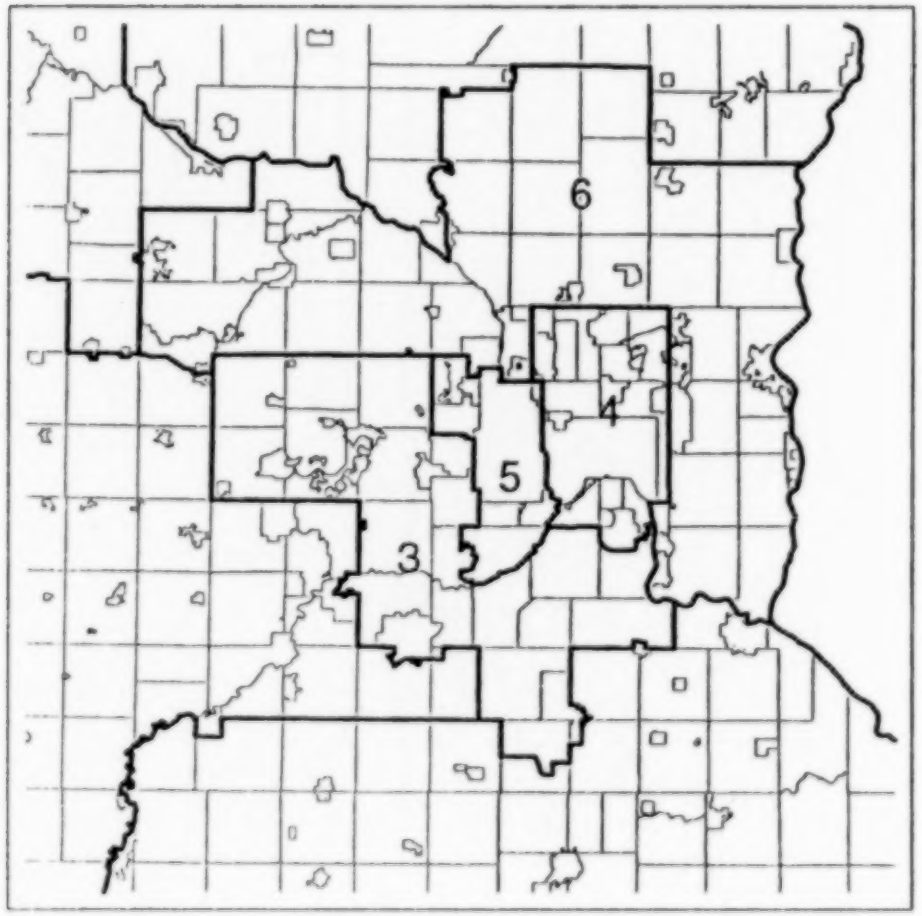
Federal Court - Congressional Plan

February 19, 1992

SF 1597 - Congressional Plan

Passed by Legislature on January 9, 1992

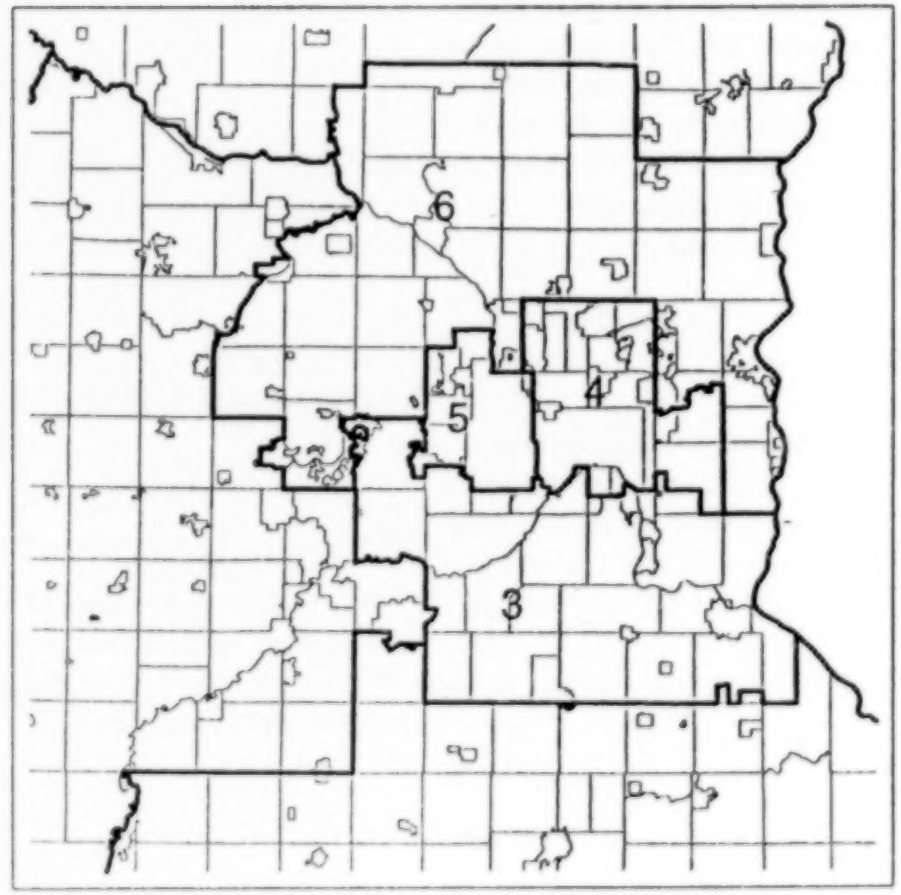
Twin Cities Metro Area



Federal Court - Congressional Districts

February 19, 1992

Twin Cities Metro Area



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

MEMORANDUM OPINION

AND

ORDER

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendant
Intervenor.

Before DONALD P. LAY, United States Circuit Judge, HARRY H. MacLAUGHLIN, United States District Judge, and PAUL A. MAGNUSON, United States District Judge.

BY DONALD P. LAY, United States Circuit Judge, and PAUL A. MAGNUSON, United States District Judge.

In 1982, this court established Minnesota's congressional districts, see LaComb v. Growe, 541 F.Supp. 145 (D. Minn.), aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982), and Minnesota's state legislative districts, see LaComb v. Growe, 541 F.Supp. 160 (D.Minn. 1982), as reflected in Minnesota Statutes §§ 2.019, 2.042-2.702 (1983). At that time, this court also established minority concentrated districts in an attempt to preserve the voting strength of minority populations.

Over the last ten years, substantial population shifts from the northern part of Minnesota to the suburbs of the Twin Cities metropolitan area have resulted in great population disparities among the state's current legislative districts. For example, suburban Senate District 48 contains 104,235 people, while Senate District 6, in the northern part of the state, contains only 50,659

people.[1] Thirty-four of the sixty-seven senate districts deviate from the ideal population of 65,300 by 10% or more.[2] Eleven of the sixty-seven districts deviate from the ideal population by 20% or more.[3] The congressional districts exhibit serious disparity as well. For example, suburban Congressional District 3 contains 668,263 people, while District 2, located outside the metropolitan area, contains only 480,079 people.[4]

On March 18, 1991, James Emison, a Caucasian resident of Hennepin County; Judy Fairbanks, a Native American resident of the White Earth Reservation in Becker County; Marie Iverson, a Caucasian resident of Dakota County; Ken Dean, a Caucasian resident of Stearns County; Steve Castillo, a Hispanic resident of Ramsey County; Lew Freeman, an African-American resident of District 60B in south Minneapolis; and Yao Lo, an Asian resident of Ramsey County, brought this action in federal district court challenging the constitutionality of the 1982 congressional districts and the 1983 state legislative districts. The suit was brought

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[1] These figures are from the House District Population Report for 1990, dated July 30, 1991, distributed to the federal district court's Special Masters Panel by the Minnesota State Redistricting System Administrator on September 16, 1991. Pursuant to Fed. R. App. P. 10(e), any party desiring to file with the clerk of the court any materials distributed at that meeting is hereby authorized to do so within seven days.

[2] Id.

[3] Id.

[4] These congressional district population figures originate from the 1990 Census of Population and Housing data prepared by the United States Bureau of the Census. A stipulation of parties regarding this information was filed with the federal district court on October 10, 1991, and obtained for the court's use through the computer and accompanying programs provided by the State of Minnesota.

against Joan Growe, Secretary of State, and Mark Lundgren, Carver County Auditor, individually and on behalf of all Minnesota county auditors.

The Emison plaintiffs allege that the 1982 congressional districting laws violate Article 1, § 2 of the United States Constitution; and that the 1983 state legislative districting laws violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Emison plaintiffs further allege that the 1983 state legislative districting laws violate Section 2 of the federal Voting Rights Act, 42 U.S.C. § 1973 (1988).[5] They claim that these districting laws unnecessarily fragment the White Earth and Red Lake reservations into four separate legislative districts. The plaintiffs assert that such fragmentation minimizes, cancels out, and dilutes effective participation in the political process by Native Americans residing on or near those reservations, thereby denying them equal opportunity to elect or influence the election of representatives of their choice in violation of the Voting Rights Act. The Emison plaintiffs also allege that the legislative districts in the City of Minneapolis unnecessarily fragment the minority population into multiple districts so as to minimize, cancel out, and dilute the effective participation in the political process by minorities, thereby denying them equal opportunity to elect or influence the election of representatives of their choice in violation of the Voting Rights Act.

The plaintiffs ask the court for declaratory and injunctive

[5] In January, 1991, Patricia Cotlow and other plaintiffs brought an action in Hennepin County District Court challenging the constitutionality of the state legislative redistricting statutes, Minn. Stat. §§2.019, 2.042-2.702 (1990), and the congressional redistricting plan set forth in LaComb v. Growe, 541 F.Supp. 145 (D. Minn. 1982). See Cotlow v. Growe, No. C8-91-985 (Minn. Special Redistricting Panel filed Jan., 1991). This complaint did not allege any violation of the Voting Rights Act under 42 U.S.C. § 1973.

relief barring the use of the districts for future elections. They also seek the adoption of new districts that consolidate the White Earth and Red Lake Reservations in a single legislative district, as well as consolidate minority populations in south Minneapolis with adjacent or nearby minority populations.

This court has subject matter jurisdiction under Title 28 U.S.C. § 1343,[6] as well as under Title 28 U.S.C. § 1331 and Title 42 U.S.C. § 1973.[7]

[6] Title 28 U.S.C. § 1343 provides in relevant part:

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> • • •
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. § 1343(a)(3) and (4)(1988).

[7] Title 42, U.S.C. § 1331(a) reads as follows:

> The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1331(a) (1988)

Title 42, U.S.C. § 1973(a) states:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement or the right of any citizen or the United States to vote on account of race or color . . . .

42 U.S.C. § 1973(a) (1988).

On April 8, 1991, a three-judge district court panel was designated pursuant to 28 U.S.C. § 2284(a) (1988).[8] On May 16, 1991, a motion to intervene in this action was granted to the Seventy-seventh Minnesota State House of Representatives and State -Senate (hereafter referred to as the defendant intervenors).[9]

Once convened, the jurisdiction of a three-judge panel under 28 U.S.C. § 2284(a) "extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decisions of such of the questions as in its opinion effectively dispose of the case." Armour v. State of Ohio, 775 F.Supp. 1044, 1048 (N.D. Ohio 1991) (quoting Sterling v. Constantin, 287 U.S. 378, 393-94 (1932)). Accordingly, this court now addresses the issues we must consider in affording complete relief to the plaintiffs. To this end, we adopt state legislative and congressional redistricting plans prepared by the court with the assistance of a

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[8] Title 28 U.S.C. § 2284(a) reads as follows:

> (a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

In June, 1991, the Chief Justice of the Supreme Court of Minnesota assigned the Cotlow action to a three-judge court under his general constitutional authority to move and transfer judges from one district to another. See Minn. Stat. § 2.724, subd. 1 (1991).

[9] Throughout this litigation the Emison plaintiffs and the Benson plaintiffs, infra, have represented the interests of the Independent-Republican (IR) political party. The legislative intervenors represent the interests of the Democratic-Farmer-Labor (DFL) political party. The Cotlow intervenors are aligned with the interests of the defendant intervenors. For purposes of identification within this opinion, we refer only to the parties as the Emison plaintiffs, the State, and the defendant intervenors.

Special Masters panel,[10] which are attached to this opinion as Sections II and IV.

On May 18, 1991, the Minnesota Legislature passed a state legislative redistricting bill, Chapter 246. The enrolled bill was presented to Governor Arne H. Carlson on May 24, 1991, who vetoed the legislation on May 28, 1991. A suit was thereafter commenced in the Ramsey County District Court alleging the Governor's veto was not effective because it had not been delivered to the legislative house of origin within the time required by the Minnesota Constitution.[11] The state district court ruled on August 2, 1991, that the Governor's veto was ineffective. The Governor did not appeal this ruling, and Chapter 246 became law. On August 9, 1991, a separate suit was commenced in federal district court challenging the constitutionality of Chapter 246.[12] This court subsequently consolidated the Emison and Benson cases.[13]

On August 21, 1991, this court unanimously entered an order which denied a motion to enjoin the state district court proceedings, granted a motion to defer its own proceedings pending further legislative action, and denied a motion to abstain

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[10] On August 27, 1991, the three-judge federal district court panel appointed three Special Masters, pursuant to Fed. R. Civ. P. 53, in order to assist the court in evaluating the redistricting issues presented.

[11] See The Seventy-seventh Minnesota State Senate and Seventy-seventh Minnesota State House of Representatives v. Carlson, No. C3-91-7547 (Ramsey County Dist. Ct. Aug. 2, 1991).

[12] Benson v. Growe, No. 4-91-603 (D. Minn. filed Aug. 9, 1991).

[13] Emison, No. 4-91-202 (D. Minn. Sept. 25, 1991) (Order Establishing Master Docket).

pending further state court proceedings.[14] In doing so, we were guided by the opinion of the Supreme Court in Scott v. Germano, 381 U.S. 407 (1965), which stated that a federal district court should not prematurely adopt a redistricting plan of its own, but should

> enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election . . . .
>
> The District Court shall retain jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan . . . .

381 U.S. at 409. Our order recognized that Germano rests the primary responsibility for redistricting with the state legislative process.[15] Counsel for the defendant intervenors represented to

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[14] Emison, No. 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order at 10-11).

[15] In discussing the state legislative process, the Minnesota Supreme Court has recognized:

> Our court read U.S. Const. art. I, § 4, as delegating a Federal responsibility to an entity, i.e., the legislature which consists of the House of Representatives and the Senate. The United States Supreme Court, final arbiter of the meaning of the Federal Constitution, construed art. I, § 4, as assigning the task of redistricting for the purpose of Federal elections not to an entity but to a process, that is, the process by which statutory law is made in the particular state exercising the delegated authority. It is this point of divergence in thinking as between the Minnesota Supreme Court and the United States Supreme Court which accounts for the difference in result. It is correct that the entity described by the words "the legislature" in the State of Minnesota consists of the House of Representatives and the Senate and does not include the governor. The process which is involved in the enactment of statutory law involves exercise of power delegated to the legislature as an entity either by a majority vote of each house or by a two-thirds majority of each house depending on whether the governor approves or disapproves of the legislation enacted.

Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965) (discussing Smiley v. Holm, 285 U.S. 355 (1932)).

this court in August, 1991, that the legislature planned amend Chapter 246 and pass a congressional plan when the session reconvened in January, 1992. Following the principles of Germano, this court thus deferred to the state agencies in order to allow them every opportunity to pass a redistricting law no later than January 20, 1992.[16]

This court refused to abstain, however, and we retained jurisdiction over the case for two reasons. First, we recognized that this court's jurisdiction was invoked under the Voting Rights Act. Proof of a violation could directly affect any state redistricting plan that might be adopted.[17] Second, this court determined

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[16] Emison, No. 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order at 10-11).

[17] In our order of August 21, 1991, we noted that the federal complaint contained issues relating to the Voting Rights Act, whereas the state court action in Cotlow did not. In refusing to send the minority plaintiffs to state court we adhered to fundamental principles governing abstention in voting rights cases. The Supreme Court has observed:

> "[R]ecognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law." England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415-16.
>
> . . . .

that the state court's appellate process would take too long to allow a valid plan to be approved and implemented in time for the 1992 election.

All parties agreed that a redistricting plan should be implemented in early February, and in any event no later than March 1, 1992. This court was cognizant that if the state district court issued a final opinion after the legislature recessed in January, 1992, and appeal to the Supreme Court of Minnesota would likely not be completed by March 1, 1992.[18]

We concluded that if the state legislative process failed to adopt a redistricting plan by January 20, 1992, this court would

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> "[T]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." Reynolds v. Sims, 377 U.S. 533, 555. The right is fundamental "because preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370. . . . Given the importance and immediacy of the problem, and the delay inherent in referring questions of state law to state tribunals, it is evident that the District Court did not abuse its discretion in refusing to abstain. Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 229; Baggett v. Bullitt, 377 U.S. 360, 375-379.

Harman v. Forssenius, 380 U.S. 528, 535, 537 (1965) (footnote omitted); see also Badham v. United States Dist. Court for the N. Dist. of Cal., 721 F.2d 1170, 1173 (9th Cir. 1983) ("The dangers posed by an abstention order are particularly evident in voting cases. . . . 'other rights, even the most basic, are illusory if the right to vote is undermined.'") (quoting Wesberry v. Sanders, 376 U.S. 1, 17 (1964)); Edwards v. Sammons, 437 F.2d 1240, 1244 (5th Cir. 1971) (indicating that delay caused by abstention is not to be countenanced in cases involving the right to vote).

[18] When a final judgment is entered in the state court proceedings the parties have ninety days in which to take an appeal. Minn. R. App. P. 104.01 (1991). At the time this order is entered, the state district court has not issued a final order as to any congressional redistricting. As a result, the time to appeal a congressional plan in the state court conceivably will not expire until late May of 1992.

then be obligated to review the allegations under the Voting Rights Act, and if necessary provide equitable relief by adoption of its own plan.[19] We recognized that in the event the state agencies did not act, the development of a plan and an appropriate order would require additional time. Contingent upon any eleventh hour action of the legislature, we appointed the three Special Masters to assist this court in studying and ascertaining the constitutionality of all plans proposed.[20]

On November 21, 1991, the state district court issued a preliminary order for state legislative redistricting.[21] The court declared, however, that it would not implement its plan if the legislature passed a redistricting plan in January, 1992. Despite the contingent nature of the state district court's plan, it announced, "by proceeding as swiftly as possible, we intend to provide any time necessary for an orderly appeal process and to avoid any duplicative litigation in the federal courts."[22] The state district court simply adopted, with a few modifications, S.F. 1596, which represents the DFL legislative party's amended plan of Chapter

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[19] Emison, No. 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order at 10-11).

[20] Since our order of appointment in August of 1991, the masters have expended approximately 1500 hours in the complex review of all plans.

[21] Cotlow, No. C8-91-985 (Minn. Special Redistricting Panel Nov. 21, 1991) (Findings of Fact, Conclusions of Law, and Preliminary Order for Judgment on Legislative Redistricting).

[22] Id.

246.[23] This was, as will be discussed, essentially the same plan which was on January 9, 1992, passed by the legislature but vetoed by the Governor.

By issuing its plan prior to the anticipated legislative redistricting action in January, 1992, we deemed it self-evident that the existence of the state district court plan could improperly influence and interfere with the legislative process. The premature issuance of such a plan prevented the occurrence of any possible compromise or negotiation which might have brought a divided state government to some form of agreement on redistricting. This court also was apprehensive about the apparent finality of the state court proceedings at that time, believing that meaningful review of the federal voting rights claims asserted only in the federal proceedings would be prevented. For these reasons, this court enjoined all further state proceedings and stayed the effect of the orders issued by the state district court in Cotlow.[24]

On December 9, 1991, the state district court proceeded to adopt its legislative redistricting plan,

> subject to the stay issued by the United States District Court in Emison v. Growe, No. 4-91-202 (D.Minn. Dec. 5, 1991), and in conformity with Minn. R. Civ. P. 54.02 the following reapportionment of the Minnesota Legislature shall be final and effective beginning with the 1992 primary and general elections, unless a constitutional plan is enacted by the State of Minnesota.

Cotlow, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991) (Findings of Fact, Conclusions of Law, and Order for Judgment on Legislative Redistricting at 12). The court did not order any injunctive relief.[25] Id. at 12-13.

On January 9, 1992, the Minnesota legislature passed amendments which special legislative redistricting committees had worked on since August, 1991. Senate File 1596. These were presented to the legislature in an attempt to cure the infirmities alleged to exist in Chapter 246. The legislature also passed a congressional redistricting plan on the same date. Senate File 1597. Governor Carlson promptly vetoed both redistricting bills on January 9, 1992.[26]

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[23] In its Pretrial Order No. 4, the state district court panel adopted an additional criterion for evaluating proposed redistricting plans, stating that all plans must follow the contours of the previously declared unconstitutional Chapter 246. Cotlow, No. C8-91-985 (Minn. Special Redistricting Panel, Oct. 1, 1991) (Pretrial Order No. 4, at 8). Upon the announcement of the adoption of this criterion, a state legislative aide to the Democratic-Farmer-Labor party felt compelled to proclaim, "It's all over. We won." Robert Whereatt, DFL Wins Round in Redistricting Fight, Minneapolis Star Tribune, Oct. 2, 1991, at 3Be.

[24] Emison, No. 4-91-202 (D. Minn. Dec. 5, 1991) (Order of Stay of All Proceedings Before the Minnesota Special Redistricting Panel in Cotlow v. Growe, No. C8-91-985).

[25] At the time this opinion is released, it appears the state district court order of December 9, 1991, adopting a state legislative redistricting plan is not yet a final order. Minnesota Rule of Civil Procedure 54.02 provides:

> the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

The Supreme Court of Minnesota has held that when a trial court issues an order disposing of fewer than all claims of all parties and does not make an "express determination that there is no just reason for delay," Pederson v. Rose Co-Op. Creamery Ass'n, 326 N.W.2d 657, 660-61 (Minn. 1982), the order does not become final and is subject to revision at any time prior to entry of judgment adjudicating all claims and is therefore not appealable of right. Id.

[26] On January 10, 1992, after the legislature had acted and the Governor had vetoed the legislation, the United States Supreme Court vacated our order of December 5, 1991, lifting the injunction on the Cotlow parties and dissolving the stay as to the state court orders. Cotlow v. Emison, No. 91-1084 (Supreme Court

In addressing this issue of redistricting, we emphasize that this court does not sit in judgment as an appellate court for the state district court. Thus, our review is not of the state district court action. We also recognize that if any error was made by this court on August 21, 1991, in refusing to abstain because of the voting rights allegations existing in the federal complaint, or if we abused our discretion in adopting January 20, 1992, as the time frame in which the state agencies could act to adopt a valid redistricting plan, then by our action today the parties are well aware that appeal to the Supreme Court of the United States will initiate consideration and any necessary correction of perceived mistakes.

This court fully recognizes the deference that should be given to state courts in state redistricting proceedings. However, where federal issues exist independently and the state judicial processes will cause untimely delay, both Scott v. Germano and Harman v. Forssenius, 380 U.S. 528 (1965), place the primary obligation on a federal court to act. A state's supreme court is, and should be, the final arbiter of claims resting on state law. Likewise, state courts may resolve federal statutory and constitutional issues, at least where Congress has not committed such matters to the exclusive jurisdiction of the federal courts. It is

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of the United States Jan. 10, 1992) (Order dissolving injunction). The defendant intervenors now urge that the dissolution of the injunction by the Supreme Court implicitly calls for this court to abstain from further action and allow the state court to proceed. We disagree. As set forth in our order of December 5, 1991, the narrow purpose of the injunction was to prevent finality of the state court action prior to the time the legislature acted. When the Supreme Court dissolved the injunction, the purpose of the injunction had been fulfilled. An appellate court does not work in a vacuum without a record or briefs from both sides. To urge that the Supreme Court intended to decide the complex federalism issues we now address without a plenary record and hearing demeans the appellate process.

equally true, however, that the United States Supreme Court is the final arbiter of federal statutory and constitutional law. As we have previously indicated, "recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law." Harman v. Forssenius, 380 U.S. at 535 (quoting England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 415-16 (1964)).

We now turn to the issues of redistricting on both the state and congressional level. We initially address plaintiffs' complaint relating to violation of the Voting Rights Act.

Voting Rights Act

Generally, Section 2 of the Voting Rights Act prohibits a state from using any standard, practice or procedure in a manner which results in the denial or abridgement of the right to vote on account of race or color.[27] The practice the Emison plaintiffs challenge relates to the legislative district boundaries near the Red Lake and White Earth reservations and in the City of Minneapolis. The Emison plaintiffs urge us to create a supermajority senate district in Minneapolis which combines the substantial minority populations from the near north side with the minority populations

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[27] Section 2(a) of the Voting Rights Act states:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title (relating to language minorities), as provided in subsection (b) of this section.

42 U.S.C. § 1973(a) (1988).

in central and south Minneapolis.

Section 2 goes on to explain how a party establishes that a practice results in an illegal abridgement of the right to vote. A violation of Section 2(a) occurs if, in the totality of the circumstances, the political processes leading to nomination or election are not equally open to participation by members of a protected class. This lack of equal access exists if minority members have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b) (1988). The statute provides that the extent to which minority members have been elected to office may be considered in determining whether a violation has occurred, but also provides there is no right to have members of the protected class elected in numbers equal to their proportion in the population.[28]

We initially recognize that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 377 U.S. 533, 562 (1964). We

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[28] Section 2(b) of the Voting Rights Act states:

> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973(b) (1988).

are further guided by the Supreme Court's admonition that the Voting Rights Act "should be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination." Chisom v. Roemer, 111 S. Ct. 2354, 2368 (1991) (quoting Allen v. State Board of Elections, 393 U.S. 544, 567 (1969)).

First we address the argument that plaintiffs' claims are precluded by the reasoning of Thornburg v. Gingles, 478 U.S. 30 (1986). In doing so, we deem it essential to make clear that the fundamental issue we face is whether voting rights violations have been proven in this case. The question is not whether any given plan complies with the Voting Rights Act. Nothing in the Voting Rights Act alters the traditional allocation of the burden of proof among the parties. To investigate whether a voting rights violation exists, it is necessary to review proffered evidence, and inferences therefrom, to determine whether boundary drawing practices may have abridged the rights of minority voters.

Gingles was an action brought by black voters of North Carolina challenging the use of one single-member district and six multimember districts in the state's legislative redistricting plan, claiming that such a plan impaired the ability of black citizens to elect representatives of their choice in violation of Section 2 of the Voting Rights Act. The Gingles court said that plaintiffs challenging multimember districting must establish that 1) the minority group is sufficiently large and geographically compact to constitute a majority in a single member district; 2) the minority group is politically cohesive; and 3) the white majority votes sufficiently as a block to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed -- usually to defeat the minority's preferred candidate. Id. at 50-51.

It is important to note that Gingles involved a challenge to multimember districts with a request for relief requiring the state

to convert entirely to single-member districts. The Gingles court was careful to disclaim any intention to set standards for a dilution claim involving a single member districting scheme:

> We also note also that we have no occasion to consider whether the standards we apply to respondents' claims that multimember districts operate to dilute the vote of geographically cohesive minority groups that are large enough to constitute majorities in single-member districts and that are contained within the boundaries of the challenged multimember districts, are fully pertinent to other sorts of vote dilution claims, such as a claim alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single-member districts resulted in dilution of the minority vote.

Id. at 47 n. 12 (emphasis added). It is the latter type of claim plaintiffs make here, i.e., that the splitting of a large and geographically cohesive minority between two or more single-member senate districts in Minneapolis results in dilution of the minority vote. The disclaimer in Gingles says that the Supreme Court has not decided whether the preconditions apply to the sort of claim plaintiffs advance here.[29]

Perhaps more importantly, recent Supreme Court decisions

[29] It is arguably inappropriate to apply the Gingles preconditions to a claim that a boundary placement in single-member district scheme improperly dilutes the minority vote. A challenge to multimember districts seeking a forced conversion to single-member districting involves a structural change in the electoral system chosen by the state. The change needed to provide relief in this case is considerably less drastic. All agree here that single-member districting is appropriate. The question is only where particular boundaries should be drawn. See also Armour v. State of Ohio, 775 F.Supp. 1044, 1050-52 (N.D. Ohio 1991).

reject the use of judicially created limitations to restrict coverage under Section 2. In Chisom v. Roemer, the court stated that

> (e]ven if serious problems lie ahead in applying the "totality of circumstances" described in § 2(b), that task, difficult as it may prove to be, cannot justify a judicially created limitation on the coverage of the broadly worded statute, as enacted and amended by Congress.

111 S.Ct. at 2368. The limits on the Voting Rights Act urged by the defendant intervenors, were we to apply them here, would be "judicially created limitation[s]" on the scope of Section 2 which are impermissible under Chisom.

Other courts also have held that the Gingles preconditions for challenging multimember districting do not apply to all Section 2 challenges. See Armour v. State of Ohio, 775 F.Supp. 1044, 1050-52 (N.D. Ohio 1991) (plaintiffs need not prove the first Gingles precondition that the minority is a large enough population to constitute a majority in a single-member district).

In light of the disclaimers in footnote 12 of Gingles and the Supreme Court's subsequent comments in Chisom, we do not view the three Gingles preconditions as dispositive in this case.[30]

[30] There is proof that the minority population has been fragmented and that it is sufficiently large and concentrated to form a majority in a single-member senate district. The record contains no statistical evidence, however, that the minority group is politically cohesive and that bloc voting operates to defeat minority preferred candidates. As commentators have noted, however, "many of the factors the Act deems important evidence of unequal access to the political process, . . . such as racial block voting and the lingering effects of discrimination, are all but inevitable in the vast majority of cases." Howard & Howard, The Dilemma of the Voting Rights Act -- Recognizing the Emerging Political Equality Norm, 83 Colum. L. Rev. 1615, 1625 (1983).

The Totality of the Circumstances

Rather than mechanically apply the preconditions of Gingles, we look to the totality of the circumstances, as required by Section 2, and consider the factors listed in the Senate Judiciary Committee Report accompanying the bill that amended Section 2 in 1982. S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207. This report elaborates on the circumstances that may be probative of a Section 2 violation, noting the following "typical factors":

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
>
> Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:
>
> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Id.

The record in this case is silent on many of the factors that a court may consider in evaluating a Section 2 claim. However, this silence cannot be considered as evidence rebutting the plaintiff's claim. The Senate Report makes this point clear. "The failure of plaintiff to establish any particular factor, is not rebuttal evidence of non-dilution." S. Rep. No. 417 at 29 n.118, 1982 U.S.C.C.A.N. at 207 n.118.

The Senate Report states that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." S. Rep. No. 417 at 29, 1982 U.S.C.C.A.N. at 207. We are also mindful that redistricting is one of the major concerns of the Act. Even when changes are made for valid reasons, a jurisdiction may not always take appropriate care to avoid discriminating against minority voters in the process. S. Rep. No. 417 at 12 n.31, 1982 U.S.C.C.A.N. at 189 n.31.

In the present case, plaintiffs urge that certain historical facts, and the inferences to be drawn therefrom, establish a prima facie case of violations under the Voting Rights Act. As a result,

this court makes the following findings of fact.

First, it is undisputed on the record that the Minnesota State Senate currently has no minority members from Minneapolis, nor has a minority member been elected to the state senate from Minneapolis in recent history. These are factors we may consider under the express language of Section 2: "The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered . . . ." 42 U.S.C. § 1973(b) (1988). This is the only factor Congress chose to expressly mention in the statute. As noted in LaComb v. Growe, 541 F. Supp. 160, 164 (1982), Minnesota's only African-American legislator in 1982 was a house member from Minneapolis. We were advised by counsel at a hearing on October 11, 1991, that there is now only one minority house member from Minneapolis, although three other minorities have been elected to the legislature from other areas in Minnesota. The Legislative Manuals (1980-1990) published by the State confirm that only two minority members have been elected to the house from Minneapolis in the past decade, and both were elected from the same district (designated as House District 57B in the 1982 plan).

Second, the most concentrated senate district in Minneapolis under the districts established in 1982, Senate District 60, contained 47.5% total minorities.[31] This concentration failed to elect a minority member to the senate in the last election. The senate districts established in 1982 do not contain super-majority minority concentrations, with the result that there are no minority senators.

[31] This information is from the Minority Population Report, dated August 20, 1991, provided to the Special Masters at the September 16, 1991 meeting with the parties' counsel.

The results of elections under the 1982 districts, with no super-majority minority senate districts, are entitled to significant weight. Congress amended Section 2 of the Voting Rights Act in 1982 precisely "to make clear that certain practices and procedures that result in the denial or abridgement of the right to vote are forbidden even though the absence of proof of discriminatory intent protects them from constitutional challenge." Chisom v. Roemer, 111 S.Ct. 2354, 2358 (1991).

Third, Minneapolis has a total minority population of 87,316, or 23.7% of its total population. This population includes 47,948 African-Americans, 15,723 Asian-Americans, 12,335 Native Americans, 7,900 Hispanics, and 3,410 other minorities.[32] The legislative districts established in 1982 created six senate districts and twelve house districts entirely within the City of Minneapolis. See LaComb v. Growe, 541 F.Supp. 160, 162 (D. Minn. 1982). If minorities had proportional representation in the Minneapolis legislative delegation, they would hold four seats in the eighteen Minneapolis legislative districts. Yet, minorities have held only one seat in these eighteen districts in the past decade. Although minorities are not guaranteed proportional representation under Section 2, we may consider the significant proportional underrepresentation of minorities in determining whether a violation of the Act has occurred. See S. Rep. No. 417, supra.

Fourth, the only minority representative from Minneapolis now in the house was elected from a super-majority minority district. This is Representative Richard Jefferson of Minneapolis in House District 57B, which has a total minority concentration of

[32] Pub. L. No. 94-171, 89 Stat.1023 (codified as amended at 13 U.S.C. § 141 (1988)).

60% and an African-American concentration of 43%.[33] The Emison plaintiffs have demonstrated that a senate district in Minneapolis can be drawn with minority populations which closely approximate those proven sufficient to elect minority members to the house of representatives. This proposed senate district would contain a 62.5% total minority concentration and a 44.5% African-American concentration.

Fifth, another factor we may consider under the Senate Report is the extent to which minorities bear the effects of discrimination in education, employment, or health. S. Rep. No. 417 at 29, 1982 U.S.C.C.A.N. at 206. The Minneapolis public school district has been found to have "acted intentionally to maintain or increase racial segregation in the schools." Booker v. Special Sch. Dist. No. 1, Minneapolis, 451 F.Supp. 659, 660 (D. Minn. 1978). The district's policies were found to have been "especially offensive due to defendant's knowledge of the extensive nature of housing segregation within its bounds." Booker v. Special Sch. Dist. No. 1, Minneapolis, 351 F.Supp. 799, 809 (D. Minn. 1972).[34]

Sixth, we may also consider the extent to which the state has used voting practices or procedures that may enhance the opportunity for discrimination against the minority group. S. Rep.

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[33] See Minority Population Report, dated August 20, 1991, provided to the Special Masters at the September 16, 1991, meeting.

[34] The continuing performance gap between minorities and whites in the Minneapolis school district was recently reported in the Minneapolis Star Tribune. See Bob Hotakainen, Benchmark Test Passing Rates Fall, Hitting All-time Low, Minneapolis Star Tribune, Feb. 5, 1992, at 1Bw.

No. 417 at 29, 1982 U.S.C.C.A.N. at 206.[35] We find a strong inference that the Minneapolis legislative districts in Chapter 246 were drawn to protect incumbents in the city's overwhelmingly white legislative delegation. Of the eighteen legislators from the City of Minneapolis, no incumbent senators are paired with other incumbents in the upcoming election, and incumbent house members are paired in only one house district. Some pairing would be literally inevitable in light of the relative population loss in Minneapolis.[36] It appears the avoidance of incumbent pairing took priority over the protection of minority interests in the plan proposed by the defendant intervenor.[37] "Since it is frequently

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[35] The extent of any history of official discrimination in voting is another factor a court may consider under the Senate Report. S. Rep. No. 417 at 28, 1982 U.S.C.C.A.N. at 206. Although we do not rely on it, Minnesota has some history, albeit quite old, of official discrimination against minorities in the voting process. The state constitution, as originally adopted in 1857, restricted the right to vote to "white citizens," "white persons," and only certain Native Americans. The voting restriction to "white" persons was eliminated in 1868, although state constitutional restrictions on the voting rights of Native Americans continued and were enforced until at least 1917. See In re Liquor Election in Beltrami County (Onsahl v. Johnson), 138 Minn. 42, 163 N.W. 988 (1917).

[36] Minneapolis declined in population from 370,951 in 1980 to 368,383 in 1990. The state's population as a whole, however, grew by approximately 7.3% during the same period. Population Notes, Minnesota State Demographer, April 1991. As a result, Minneapolis will lose one house district due to population shifts in the past decade.

[37] Incumbent protection is not state policy in Minnesota. The issue of "incumbency" is a major political issue of the day, with strong advocates on each side. Incumbent protection was not, however, a redistricting standard chosen by the legislature in the concurrent resolutions unanimously adopted by both houses in its failed attempts at redistricting. (See Emison, No. 4-91-202 (D. Minn. Oct. 1, 1991) (Exhibits to the Memorandum of the Minnesota Legislature Regarding

impossible to preserve white incumbencies amid a high black-percentage population without gerrymandering to limit black representation, it seems to follow that many devices employed to preserve incumbencies are necessarily racially discriminatory." Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).[38]

Although the record is not clearly developed on all factors, we conclude the evidence is sufficient to establish that minority

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Criteria for Legislative and Congressional Redistricting Plans, filed October 1, 1991)). The concurrent resolutions did, however, provide that districts must not dilute minority voting strength, and that where a concentration of a racial or language minority makes it possible, the districts must increase the probability that minority members will be elected. Thus, the defendant intervenors' attempt to protect incumbents resulted in disregard of the announced state policy of nondilution of minority populations.

[38] We recognize that the disclaimer language in Section 2(b) provides "[t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." The legislative history is less than completely enlightening on the significance of this clause.

On the one hand, the Senate Report indicates the purpose of the clause was to "put[] to rest any concerns that have been voiced about racial quotas." S. Rep. No. 417 at p. 31, 1982 U.S.C.C.A.N. at 208. The report elsewhere makes clear "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." S. Rep. No. 417 at 29, 1982 U.S.C.C.A.N. at 207. Similarly, "[t]he failure . . . to establish any particular factor is not rebuttal evidence of non-dilution." Id. at n.118. Finally, the Senate Report notes that "the presence of minority elected officials is a recognized indicator of access to the (electoral) process." S. Rep. No. 417 at 16, 1982 U.S.C.C.A.N. at 193.

On the other hand, the Senate Report also states that, "[t]he disclaimer thus guarantees that the question of whether minority candidates have been successful at the polls will not be dispositive in determining whether a violation has occurred." So Rep. No. 417 at 68, 1982 U.S.C.C.A.N. at 247. The report also indicates that a mere history of minority underrepresentation, plus the addition of one other "factor" would not be sufficient to prove a violation. S. Rep. No. 417 at 34, 1982 U.S.C.C.A.N. at 212.

voting interests have been diluted in the City of Minneapolis in violation of Section 2. This finding is consistent with the Supreme Court's admonition that the Act is to be interpreted in "the broadest possible scope," and that courts may not resort to "judicially created limitation(s) on the coverage of the broadly worded statute." Chisom, 111 S.Ct. at 2368. The all-white senate delegation from Minneapolis, the significant proportional underrepresentation of minorities from the overall legislative delegation from Minneapolis, the apparent attempt to protect incumbencies at the expense of minority concentrations, the fragmentation of a geographically cohesive minority population into different senate districts, the educational disadvantage of Minneapolis minorities, the segregation in the Minneapolis school districts, and the judicial experience showing the need for supermajority minority districts, when considered all together, are sufficient to create a prima facie case in the totality of the circumstances which exists here.[39]

The plan submitted by the defendant intervenors which is essentially Senate File 1596, as vetoed by the Governor, fails to create any majority minority senate districts, but it does propose one near majority minority district. This district contains 49% total minorities, with African-Americans comprising only 29% of the district's population. The defendant intervenors' plan also creates a Minneapolis senate district with a total minority concentration of

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[39] Although we do not find that a Voting Rights Act violation has been established in the area of the Red Lake and White Earth reservations, we note that Minnesota has some history of official discrimination in the voting process in the Red Lake reservation area. See In re Liquor Election in Beltrami County (Opsahl v. Johnson), 138 Minn. 42, 163 N.W. 988 (1917). We have been advised that State Senator Harold "Skip" Finn is a Native American. The state senate redistricting plan we adopt today contains a higher Native American concentration in that area than the plans proposed by the defendant intervenors or the plaintiffs.

40% and an African-American concentration of 28%.[40] Defendant intervenors' proposal as to these districts is also included in the plan adopted by the State district court in its December 9, 1991, order. See n.23, supra. We find that the defendant intervenors' proposal, as adopted by the state court, fails to provide the equitable relief necessary to cure the violation of the Voting Rights Act.

To be sure, arguments can be made that creation of two strong minority-influenced senate districts in Minneapolis, one nearly a majority minority district, adequately protects minority voting interests. However, we cannot ignore the fact, which history has shown, that the all-white senate delegations from Minneapolis are the result of minority concentrations at the levels proposed by the defendant intervenors. And, where the defendant intervenors have not made a record to support its theory, we turn to judicial experience to find a reliable guide to action. See Smith v. Clinton, 687 F.Supp. 1361, 1363 (E.D. Ark.), aff'd, 488 U.S. 988 (1988). Judicial experience, as well as the results of past elections, suggests that the creation of a super-majority minority senate district in Minneapolis is necessary if we are to find that a districting scheme complies with the Voting Rights Act.

"[H]istorically disadvantaged minorities require more than a simple majority in a voting district in order to have . . . a

[40] The alternative approaches of the parties raise the sort of difficult questions Justice Marshall foresaw in Beers v. United States, 425 U.S. 130, 153-54 n.12 (1976) (Marshall, J., dissenting). Here an increase in minority concentration to super-majority levels in one district results in a decline in minority voting strength in another district. For example, in the plans submitted by the parties, the second largest minority population senate districts in Minneapolis have a 19% minority variance, with the defendant intervenors creating a 40% minority district, and the Emison plaintiffs creating only a 21% minority senate district.

practical opportunity to elect candidates of their choice." Whitfield v. Democratic Party, 890 F.2d 1423, 1428 (8th Cir. 1989) aff'd en banc, 902 F.2d 15 (8th Cir. 1990), cert. denied, 111 S.Ct. 1089 (1991) (quoting Smith v. Clinton, 687 F.Supp. 1361, 1362 (E.D. Ark.), aff'd, 488 U.S. 988 (1988)). The three-judge panel in Smith, noted that in fashioning a remedy for Voting Rights Act violations, a guideline of 65% of the total population is frequently used because, "[i]t is widely understood that 'minorities must have something more than a mere majority even of voting age population in order to have a reasonable opportunity to elect a representative of their choice.'" Smith, 687 F.Supp. at 1362-63 (quoting Ketchum v. Byrne, 740 F.2d at 1413).

Decisions from the most recent round of redistricting cases also suggest that "super-majority minority" districts are necessary to adequately protect minority voting interests. Super-majority concentrations of "approximate[ly] 65% minority populations are generally regarded as necessary to ensure minorities a reasonable opportunity to control a district." Hastert v. State Bd. of Elections, 777 F. Supp. 634 (N.D. Ill. 1991). As the three-judge panel in Hastert explained:

> Minority concentrations of 65% total population and 60% voting age population within a single district are regarded as necessary to provide a minority population with a reasonable opportunity to "exercise political control over that district." United Jewish Organizations, Inc. v. Carey, 430 U.S. 144 (1977). These "super-majority districts" compensate for the higher nonvoting age population percentages, lower voter registration and lower turnout found in minority communities. See Ketchum v. Byrne, 740 F.2d 1398, 1413-15 (7th Cir. 1984), cert. denied, 471 U.S.

1135 (1985); In re Congressional Districts [Reapportionment] Cases, No. 81 [sic] 81 C 3915, slip op. at 14 (N.D. Ill. Nov. 23, 1981).

Id. at 647 n.20. We are also mindful of the admonition that "when reliable, determinative statistics are not available, in scrutinizing a redistricting plan for fairness to minority groups, the district court should give careful consideration to the 65% figure or some variation of it." Ketchum v. Byrne, 740 F.2d at 1416.

The plan we adopt today, attached as Section II.B., contains a super-majority minority senate district in Minneapolis Senate District 59, with a total minority concentration of 60% and an African-American concentration of 43%. This is the same minority concentration which has proven adequate to elect minority members to the house from Minneapolis. Although we do not achieve precisely the 65% guideline suggested by case law,[41] we use "some variation of it," Ketchum, 740 F.2d at 1416, to come as close as possible while respecting other announced criteria.[42]

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[41] We chose not to use the super-majority minority senate district proposed by the Emison plaintiffs, even though its minority concentration is slightly higher than the super-majority minority district created by the court. The Emison plaintiffs' district achieved a slightly higher minority concentration only by using boundary lines that were significantly jagged. The juts and teeth in that district are, in our view, excessive and not necessary to achieve an acceptable district.

[42] Even if this court were to find the evidence insufficient to establish a voting rights violation, the affirmative relief we grant in the present case is no greater than that we would otherwise provide under the standards we imposed on any of the court plans to be submitted under paragraph 5 of this court's October 21, 1991, criteria order, which provides: "The districts shall preserve the voting strength of minority populations and will, wherever possible, increase the probability of such minority representation from areas of sizable concentrations of minority populations." Emison, No. 4-91-202 (D. Minn. Oct. 21, 1991) (Order at 3).

Federal Court Plan for Redistricting the State Legislature

In view of our finding that the Voting Rights Act has been violated and plaintiffs are entitled to equitable relief, we turn to the overall question of legislative redistricting. The remedial plan we adopt today provides the relief necessary under the Voting Rights Act and the Constitution. In granting this equitable relief, we necessarily review the adjoining districts, and contemporaneously review and adopt a legislative redistricting plan to obviate the existing constitutional infirmities. Maps of the court legislative plan are attached in Section IV.A. The controlling descriptions for the House and Senate plans are attached in Sections II.A.3. and B.3. If there are any variances in other attachments, these census tract descriptions control. Also included in Sections II.A. and II.B. are computer generated data reflecting district populations, subdivision splits, minority populations, and incumbents. The results of a deviation analysis, a visual compactness analysis, and a computerized compactness analysis executed with the assistance of the system administrator of the Legislative Redistricting Committee are also attached as Section III.

The constitutional requirements of redistricting plans are well established. In considering whether a plan of legislative redistricting is constitutional, a court must strive to achieve the lowest population deviations while also following expressions of state policy on compactness and contiguity. Of course, a court plan must be nonpartisan in achieving these standards.

The defendant intervenors urge that we adopt Chapter 246 as the basic configuration of any plan of redistricting. They argue that the Supreme Court's decision in White v. Weiser, 412 U.S. 783 (1972), and Upham v. Seamon, 456 U.S. 37 (1982), require

that we defer to Chapter 246 as expressing the "state policy." We cannot agree.[43]

Chapter 246 contained numerous infirmities, including excessive population disparities and noncontiguous districts. The parties concede Chapter 246 was a hastily drafted bill containing numerous errors. These constitutional defects were acknowledged by all of the parties. We agree that Chapter 246 is unconstitutional.

The defendant intervenors urge that we adopt the provisions of a bill, Senate File 1596, which allegedly contains the curative amendments to Chapter 246. This bill contains 160 changes to Chapter 246 spread over sixty-three pages of text. However, Senate File 1596 was vetoed by the governor in January, 1992. Thus, the attempted correction of Chapter 246 has been rejected as state policy by the governor's veto. See Duxbury v. Donovan, 272 Minn. 424, 128 N.W.2d 692 (1965); see also Smiley v. Holm, 285 U.S. 355 (1932); cf. Wise v. Linscomb, 437 U.S. 535, 539-40 (1978). The executive has a constitutionally recognized role in redistricting in Minnesota. To urge that Chapter 246 as amended by Senate File 1596 reflects state policy ignores the veto of the highest executive officer of the state.

Further, Chapter 246, as well as the modifications proposed in Senate File 1596, do not provide a remedy for the diminution of minority voting rights we have addressed. Our discretion in fashioning relief is not limited to Chapter 246.

In preparing the court plan, we have considered state policy as expressed in various sources, including the state constitution and

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[43] The ease in which the court was able to correct the legislative plans in Weiser and Upham does not exist in the present case. See n.50, infra. Among other things, no map of Chapter 246, as written, was provided to the court.

a bipartisan concurrent resolution unanimously adopted by both houses of the legislature.[44] The concurrent resolution reflects state policy on redistricting, and is substantially similar to the criteria this court previously adopted. This concurrent resolution provides, in relevant part:

> (1) The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.
>
> (2) Each district is entitled to elect a single member.
>
> (3) A representative district may not be divided in the formation of a senate district.
>
> (4) The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent, plus or minus.
>
> (5) The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.
>
> (6) The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minne-

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[44] Defendant intervenors have acknowledged in briefs to this court that the concurrent resolutions of the legislature on redistricting are an expression of state policy. Emison, No. 4-91-202 (D. Minn. Nov. 12, 1991) (Memorandum of the Minnesota Legislature in Response to the Emison Plaintiffs' Proposed Legislative and Congressional Redistricting Plans). The concurrent resolution was submitted to the Court on October 1, 1991, as an exhibit to defendant intervenors' brief on the criteria for legislative and congressional redistricting plans.

apolis and St. Paul; then in Minneapolis and St. Paul.

(7) The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected.

(8) A county, city, or town should not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory.

(9) The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards.

H.R. Con. Res. No. 2, 77th Leg., Reg. Sess. (1991).

A) Population Disparities

Equality of population in state legislative redistricting is a criteria which has thus far escaped the standards of exactness required in congressional redistricting at least where an otherwise lawful plan is validly enacted by the state legislature. See, e.g., Connor v. Finch, 431 U.S. 407, 418 (1977); Mahan v. Howell, 410 U.S. 315 (1973).

Equality in population was recognized by the Minnesota legislature in its May, 1991, concurrent resolutions, which set a maximum permissible deviation of plus or minus 2%. This court's October 21, 1991, criteria order also set an outside deviation limit of plus or minus 2% in plans that would be considered by the court. Although the outer limit of plus or minus 2% deviation may be permitted by the federal constitution, this does not mean that where the legislature has failed to enact a valid plan, courts should not strive to implement, along with other constitutional concerns, a plan of redistricting which provides the greatest numerical

equality possible.[45] The plan this court now adopts has significantly lower population deviations from the ideal than the plans proposed by the defendant intervenors or the plaintiffs. In 1965, the Minnesota Supreme Court recognized that "[t]he whole object of (redistricting) . . . 'is to vest in the people rights that inherently belong to them, namely, participation upon an equal footing in the affairs of the state.'" Duxbury v. Donovan, 272 Minn. 424, 434, 138 N.W.2d 692, 698-99 (1965) (quoting State ex rel. Meighen v. Weatherill, 125 Minn. 336, 341, 147 N.W. 105, 107 (1914)). The state constitution also provides that "[t]he representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof." Minn. Const. art. IV, § 2.

The Supreme Court has observed that any court-ordered reapportionment plan will be held to stricter standards and must strive to achieve "the goal of population equality with little more than de minimis variation." Chapman v. Meier, 420 U.S. 1, 27 (1975). As the Court in Chapman stated, "[a] court-ordered plan, however, must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features." Id. at 26.

The defendant intervenors' proposed house districts range from a negative deviation of -1.96% (640 persons) to a positive deviation of 1.97% (643 persons), a range of 1243 persons or 3.93%. On average, i.e. the statistical mean deviation, these house districts deviate from the ideal population by .92% (302 persons).

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[45] Court-made plans must be viewed with greater scrutiny than legislative plans. See Wise v. Linscomb, 437 U.S. 535, 540 (1978); Connor v. Finch, 431 U.S. 407 (1977).

None of the house districts are at the ideal population level.

Plaintiffs' house districts range from a negative deviation of -.95% (309 persons) to a positive deviation of .96% (314 persons), a range of 623 persons or 1.91%. On average, plaintiffs' house districts deviate from the ideal population by .32% (106 persons). One of the plaintiffs' house districts is at the ideal population level.

The house districts created by this court's plan range from a negative deviation of -.74% (243 persons) to a positive deviation of .66% (214 persons), a range of 457 persons or 1.40%. On average, the house districts deviate from the ideal population by .19% (62 persons). Six of the house districts in the plan adopted today are at the ideal population level.

The defendant intervenors' proposed senate districts range from a negative deviation of -1.83% (1197 persons) to a positive deviation of 1.59% (1036 persons), a range of 2233 persons or 3.42%. On average, the senate districts deviate from the ideal population by .66% (430 persons). None of the senate districts are at the ideal population level.

Plaintiffs did not submit statistical data for their senate districts. One can be deduced, however, from the house district data supplied by the plaintiffs. Plaintiffs' senate districts range from a negative deviation of -.80% (508 persons) to a positive deviation of .80% (1.60 persons), a range of 1016 persons or 1.60%. On average, the senate districts deviate from the ideal population by .24% (152 persons). One of the senate districts is at the ideal population level.

The senate districts created by this court's plan have population deviations ranging from a negative .74% (401 persons) to a positive deviation of .58% (368 persons), a range of 769 persons or 1.20%. On average, the senate districts deviate from the ideal population by .15% (95 persons). Two of the senate

districts are at the ideal population level.

The defendant intervenors' plan fails to give each citizen of Minnesota an equally effective voice in the election of members to the legislature. For example, in one district 32,011 people have one representative under defendant intervenors' plan. In another district, 33,293 people are also entitled to one representative. Under the court's plan, 67% of the house district populations are within .25% of ideal. The defendant intervenors' plan only has 15% of the districts within .25%. We do not perceive any justification for the population disparities in their plan. The court's plan is more compact, splits fewer cities and townships, better protects minority voting rights, and still contains substantially lower population deviations.

B) Municipal Boundaries

This court's plan of legislative redistricting better meets the state policy of respecting municipal boundaries wherever possible. This element of state policy seeks to ensure that the equality of representation is also effective representation by attempting to follow and respect the communities of interest created by cities and other minor civil divisions. There are fewer city and township splits in our plan than in the plans proposed by the defendant intervenors or the plaintiffs. This court's senate plan splits only 36 cities and townships, while the defendant intervenors' plan splits 44 cities and townships. This court's house plan splits only 58 cities and townships. The house plan proposed by the defendant intervenors splits 61 cities and townships, while the plaintiffs' plan splits 92 cities and townships.[46]

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[46] The Emison plaintiffs did not provide subdivision split data for their senate districts.

C) Compactness

The court's plan is also more compact than either of the two plans submitted to the court. In evaluating the compactness of plans, we have used the methodology suggested in Polsby and Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Gerrymandering, 9 Yale Law & Policy Review 301 (1991). The analysis was performed using the computer supplied by the parties and a computer program developed by the Redistricting System Administrator for the Legislative Subcommittee on Redistricting.

At the house district level, the court's redistricting plan is 7% more compact than that proposed by defendant intervenors and 6% more compact than plaintiffs' proposal. At the senate district level, the court's plan is 10% more compact than the plaintiffs' plan, and is as compact as the defendant intervenors' plan.[47] Overall, the court plan is more compact than either of the plans submitted.

D) Partisan Fairness

The interests of both major political parties in Minnesota are represented in this case. Both have argued that the plans of redistricting submitted by the other are politically motivated and unfair.

In Davis v. Bandemer, 478 U.S. 109 (1986), the Supreme Court ruled that partisan gerrymandering was a justiciable issue.

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[47] A summary of the statistical compactness analysis is attached as Section III.3. Prior to the availability of the computer generated compactness analysis, the Special Masters utilized the alternative methodological technique of visually comparing the area of a district as a percentage of the area of a circumscribed circle around the district. The results of that analysis, although admittedly less precise than a computerized analysis, confirm the overall superior compactness of the court plan. A summary of that analysis is contained in Section III.2.

The much divided Bandemer Court established the following elements of this justiciable claim: "[I]n order to succeed . . . plaintiffs were required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." Id. at 127. Further, the plurality disagreed with the position that "disproportionate election results alone are sufficient effect to support a finding of a constitutional violation." Id. at 142. Rather, the plurality found that it was "appropriate to require allegations and proof that the challenged legislative plan has had or will have effects that are sufficiently serious to require intervention by the federal courts in state reapportionment decisions." Id. at 134. Specifically, "[u]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." Id. at 132.

Other than our concern expressed above relating to the dilution of minority voting interests, there has been no showing by any of the parties that either of the legislative redistricting plans submitted to this court for review are unconstitutionally gerrymandered under this test.[48]

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[48] It should be noted that one of the principal architects of Chapter 246 has stated:

> You can gerrymander!
>
> Modern technology, while making it practicable to draw districts that are mathematically equal, has also allowed the majority to draw districts that pack and fracture the minority in a way as to minimize a possibility of there ever becoming a majority.
>
> The Courts are now faced with the need to develop new criteria for judging the 'fairness' of redistricting plans, but so far they have not succeeded.

In testing the political fairness of plans of redistricting, the parties urge that one indicia of unfairness is the extent to which the incumbents of one party or the other have been matched or paired with other incumbents in the new districts. Here, both °parties urge that plans submitted to this court show clear indications of partisanship. These arguments must be evaluated with the Supreme Court's observation that minimizing the "number of contests between present incumbents does not in itself establish invidiousness." White v. Weiser, 412 U.S. 783, 797 (1973) (quoting Burns v. Richardson, 384 U.S. 73, 89 n.16 (1966)).

The plan developed by the court was developed without regard to the residence of incumbents.[49] Adherence to principles of compactness and population equality, and respect for governmental boundaries insures that partisan gerrymandering is reduced or eliminated. See, Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 Yale L. & Pol'y Rev. 301 (1991); Backstrom, Robins & Miller, Partisan Gerrymandering in the Post-Bandemer Era, 4 Constitutional Commentary 285 (1987); Schwartzberg, Reapportionment, Gerrymanders and the Notion of Compactness, 50 Minn. L. Rev. 443 (1966).

Peter S. Wattson, Senate Counsel for the State of Minnesota, How to Draw Redistricting Plans That Will Stand Up in Court (August 1, 1989) (emphasis added).

Given the adoption of the court's own plan, we need not today address how to develop such new criteria for judging constitutional fairness, but we do believe that such new criteria are needed.

[49] After it was completed, however, two boundaries were moved very slightly in an effort to strengthen minority representation. We took similar care to avoid pairing minority incumbents in drafting the 1982 legislative districts. See LaComb v. Growe, 541 F.Supp. 160, 164, 165 n.14 (D. Minn. 1982).

The court's plan of redistricting was developed without regard to partisanship. Adoption of the court's plan insures that partisan motivation, if in fact it existed in the plans presented to us, is not perpetuated.

Finally, we consider Weiser and Upham. In those cases, congressional redistricting plans were the only evidence of state policy and the district courts did not rely on other state policies.[50] State policy in the present case is reflected in the bipartisan resolutions of the legislature. We also have followed state policy as reflected in the state constitution's requirement that population be apportioned equally. See Minn. Const. art. IV, § 2. We have also explained why we believe the plan complies with federal law,

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[50] Weiser did not involve a Voting Right Act issue. In Emison, two parties have come forward claiming that their rights have been violated under this act. The issues in both Weiser and Upham involved relatively minor deviations from the optimal reapportionment plan which could be easily remedied without affecting other district lines. Such is not the case with Emison.

The average population deviations contested in Weiser were well under 2%. In Emison, this court is facing population deviations in Chapter 246 as great as 43.45% above the ideal and 45.10% below the ideal, with the total range of these deviations resting at 88.55% -- this is 22.11 times the overall range which the Minnesota Legislature has imposed upon itself.

The holding in Upham addresses a court-ordered reapportionment plan for only one county. In Emison, this court is being asked to adopt approximately 160 corrections to Chapter 246 which allegedly affect over thirty state senate and house districts in approximately one third of the state's eighty-seven counties.

As the Court stated in Weiser, district courts "should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and not in itself vulnerable to legal challenge. The District Court should not, in the°name of state policy, refrain from providing remedies fully adequate to redress constitutional violations which have been adjudicated and must be rectified." Weiser, 412 U.S. at 797.

as well as the existing policy of the state.[51] In drafting a constitutional plan, Weiser and Upham do not limit our discretion by requiring adherence to an unconstitutional redistricting statute where the only proposed curative amendments have been rejected by the executive branch.

We are convinced that the court's plan constitutionally protects minority voting rights and best serves the interests of the citizens of the State of Minnesota by respecting city and township lines while creating more compact and more equally populated legislative districts.

D. Congressional Plan

The Minnesota legislature passed a congressional redistricting plan, Senate File 1597, on January 9, 1992, which was vetoed by the Governor that same day. As this attempt at redistricting failed to survive the legislative process, the proposed plan does not represent state policy. See Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965). In the meantime, the congressional districts now in place remain seriously malapportioned. The existing districts deviate from the ideal as follows:[52]

District	Total Pop.	Abs Dev.	% Dev.
01	527,423	-19,464	- 3.56
02	480,079	-66,808	-12.22
03	668,263	121,376	22.19
04	539,004	- 7,883	- 1.44
05	498,387	-48,500	- 8.87
06	652,982	106,095	19.40
07	518,213	-28,674	- 5.24
08	490,748	-56,139	-10.27

Plan Total 4,375,099

Largest Positive Deviation is:	121,376	22.19 Percent
Largest Negative Deviation is:	-66,808	-12.22 Percent
Overall Range:	188,184	34.41 Percent

The "equal representation" standard of Article 1, § 2 of the Constitution requires that congressional districts "be apportioned to achieve population equality 'as nearly as is practicable.'" Karcher v. Daggett, 462 U.S. 725, 730 (1983) (quoting Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). Karcher goes on to state:

> Adopting any standard other than population equality, using the best census data available would subtly erode the Constitution's ideal of equal representation. If state legislators knew that a certain de minimis level of population differences was acceptable, they would doubtless strive to achieve that level rather

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[51] As stated by Justice Stevens in Karcher v. Daggett, 466 U.S. 910, 911 (1984) (Stevens, J., concurring):

> Once a Constitutional violation has been found, a District Court has broad discretion to fashion an appropriate remedy . . . Because the Forsythe Plan contained lower population variances, it more completely redressed the Constitutional violation. Nor was it an abuse of discretion to consider the fact that the Forsythe Plan created more compact districts; our previous opinion acknowledged that this was a legitimate consideration in reapportionment . . . ; here the District Court found that the plan advocated by appellants constituted 'an intentional gerrymander in favor of certain democratic representatives'.

[52] These congressional district population figures originate from the 1990 Census of Population and Housing data prepared by the United States Bureau of the Census. See n.4, supra.

> than equality. Furthermore, choosing a different standard would import a high degree of arbitrariness into the process of reviewing apportionment plans.

Karcher, 462 U.S. at 731-732 (citing Kirkpatrick v. Preisler, 394 U.S. 526, 531-32 (1969) (footnote omitted); see also White v. Weiser, 412 U.S. 783, 790 at n.8 (1973); Reynolds v. Sims, 377 U.S. 533, 577 (1964).

We now adopt the congressional redistricting plan prepared by the Special Masters at the request of this court, which contains the smallest population deviations achievable. Five of the eight congressional districts are at the absolute ideal size for congressional districts in Minnesota, 546,887 people, and three of the districts deviate from the ideal by only one person. The plan preserves the basic "four-four" structure, adopted in 1982 in LaComb v. Growe, 541 F. Supp. 145 (1982), by creating four entirely metropolitan districts and four districts predominantly located in greater Minnesota. It was not possible to honor the seven-county metropolitan area boundary lines completely because the state's population, while approximately half metropolitan and half outstate, is not exactly so divided.

Our congressional plan also respects county lines in greater Minnesota, where the county typically serves as an important unit of local government. Again, however, to achieve the ideal population equality agreed to by all parties, some county splits were unavoidable. In the metropolitan area, where municipalities are generally the more important units of government, some splits were unavoidable if population equality was to be achieved.

The congressional redistricting plan we adopt today is faithful to the principle of affording equal representation to all regions of the state, it minimizes population deviations from equality, and it is compact. Maps of the court's congressional plan

are attached in Section IV.B. The controlling descriptions are attached in Section II.C.1.. If there are any variances in other attachments, these census tract descriptions control. Also included in Section II.C. are computer generated data reflecting district populations, subdivision splits, and minority populations.

This court considered the three alternate plans submitted by the Emison plaintiffs, the Benson plaintiffs, and the defendant intervenors. After carefully weighing the many arguments advanced and alternatives proposed by all parties, however, we conclude that the plan we adopt today better meets state policy and our previously announced criteria.

CONCLUSION

We find that the redistricting plan as submitted by the defendant intervenors and as adopted by the state district court, which fragments minority voting interests, fails to provide the affirmative relief necessary to adequately protect minority voting rights under Section 2 of the federal Voting Rights Act. 42 U.S.C. § 1973 (1988). The plan we adopt today contains a super-majority minority senate district in the City of Minneapolis with a total minority concentration of 60% and an African American concentration of 43%. In addition, the court finds that the plans submitted by the parties do not contain de minimis population deviations nor do they present compact or contiguous configurations. The court's plan of legislative redistricting better meets the state policy respecting municipal boundaries wherever possible. The court further rejects the proposed congressional redistricting plans of the parties and adopts a plan which contains the minimal population deviations achievable and respects county lines in Greater Minnesota where the county typically serves as an important unit of government.

The foregoing opinion is hereby adopted as our findings of fact and conclusions of law.

This court was properly convened pursuant to 28 U.C.S. § 2284(a) and 28 U.S.C. §§ 1343(a)(3), (4). We acknowledge the stipulation by the parties as to the unconstitutional status of the 1982 congressional district plan and the 1983 state legislative district statutes. In the absence of timely remedial action by the state agencies, and in view of the proven need to prevent continuing dilution of minority voting rights, we conclude that it is our duty to effect a redistricting plan to replace what has been found to be invalid. Once adopted, such plans must govern the nomination and election of all state legislators for Minnesota and all United States Representatives from Minnesota beginning with the 1992 primary and general elections, continuing thereafter until the Minnesota state legislative process timely adopts its own constitutional redistricting plans. We further conclude that irreparable injury would occur in Minnesota to the people, electorate, candidates and their supporters if we did not permanently enjoin the subject of this order and insure that it is properly carried out.

We express our appreciation and gratitude to the parties and intervenors, to the office of the Attorney General of the State of Minnesota, to Special Masters John S. Hoyt, Jr., Joseph T. Dixon, and Gregory L. Wilmes, and to law clerks Elliott G. Smith and Susan J. Nolting, who have all cooperated in working diligently in reviewing the legislative and congressional redistricting plans.

IT IS THEREFORE ORDERED:

That defendant Joan Growe, the duly elected and qualified Secretary of State of the State of Minnesota, in her official capacity, pursuant to Minnesota Statutes, Chapters 200-2110 (Supp. 1991), as the chief election officer of the State of Minnesota, and

all those acting by and under her authority, accept filings and conduct elections only in accordance with the provisions of this order, and in conformity with the election statutes of the State of Minnesota which are not inconsistent therewith. Defendant Growe and those acting by and under her authority are enjoined from accepting filings otherwise than in conformity with this order, or from declaring the results of any such election held otherwise than in conformity with the order of this court, except as may be provided by law for the appeal of this order to the Supreme Court of the United States.

Jurisdiction is retained for the purpose of making any further orders deemed necessary to insure the effectuation of our order adopting a state legislative redistricting plan and a congressional redistricting plan for the State of Minnesota, and this order permanently enjoining interference with said redistricting plans.

Appropriate orders taxing costs against Joan Growe, Secretary of State of the State of Minnesota, will be entered for Masters' fees and expenses, assistants' fees and expenses, printing expenses, computer expenses, and miscellaneous supplies and equipment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 19, 1992.

/s/
Donald P. Lay, United States States Circuit Judge

/s/
Paul A. Magnuson, United District Court Judge

MacLaughlin, J., concurring as to those parts of this decision relating to congressional reapportionment, and dissenting as to the parts of this decision relating to legislative reapportionment.

Since I believe neither the law nor the facts justify the majority opinion regarding legislative reapportionment, I dissent. On December 5, 1991, a majority of this Court enjoined the Minnesota state district court from any further proceedings in Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel), a case pending before the state court on the issue of legislative and congressional redistricting. That injunction was summarily and unanimously vacated by the Supreme Court of the United States on January 10, 1992. I dissented from the issuance of the injunction and stated, in part, as follows:

> I do not agree that the state court should be enjoined from proceeding with its plan of reapportionment. I see no reason why that court is not fully able to consider and decide the reapportionment issues presented to it.
>
> In addition, [the order of the state court] seems completely appropriate both as to the law and as to the reapportionment plan it proposes. Clearly Chapter 246 represents state policy which, in my judgment, must be the cornerstone of any new reapportionment plan. The amendments made to Chapter 246 by the state court . . . are an attempt by the state court to follow the state policy provided in Chapter 246.

(Footnotes omitted.)

The majority now makes a last-minute attempt to thwart legitimate state policy and to prevent the state court plan from

being implemented. I continue to strongly believe that the unvetoed law enacted by the Minnesota Legislature, that is, Chapter 246, must be the starting point for any reapportionment plan, and that the majority opinion clearly ignores the law in its failure to recognize that state policy.

The role of courts in reapportionment cases is narrowly circumscribed. The United States Supreme Court has made clear that reapportionment is primarily an issue for the political branches, and that "(i)n fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary. Upham v. Seamon, 456 U.S. 37, 41-42 (1983) (citing White v. Weiser, 412 U.S. 783, 794-95 (1973)). A court-ordered reapportionment plan must reconcile the requirements of the federal constitution with the goals of state policy; "[a]n appropriate reconciliation can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." Id. at 43. The Supreme Court has therefore held that a district court impermissibly intrudes on state policy when, in choosing between two possible court-ordered redistricting plans, it fails to choose the plan that most closely approximates the state-proposed plan. Id. at 42 (citing Weiser, supra).

In the instant case, this Court has before it a lawfully enacted reapportionment plan, a plan that embodies the state policy of Minnesota regarding the apportionment of Minnesota's own legislative districts. Faced with choosing between a plan based on Minnesota's reapportionment legislation and plans unrelated to that legislation, this Court's obligation is clear: it errs if it does not choose the plan that is modeled on, and most closely approximates, the state policy as evidenced by the legislation. See Id. The plan

of the Minnesota state district court is based upon Chapter 246.[1] Chapter 246 is not perfect, but neither is it fatally flawed. Indeed, the Minnesota court properly found that constitutional defects in Chapter 246 could be cured and, in accordance with the mandate of the United States Supreme Court, made the adjustments necessary to render the plan constitutionally sound.[2] Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel, Dec. 9, 1991). Under these circumstances, in my opinion, the proper role of this Court is to either stay its hand and allow the state court plan to proceed or to defer to Minnesota's legislative reapportionment policy by adopting the state court plan as our own.

I. The Alleged Voting Rights Violation

The majority, in an extraordinary act of reaching out, concludes that voting rights violations exist and that it is therefore justified in brushing aside state policy in favor of its own reapportionment preferences.[3] This Court is of course obligated to ensure that any plan it adopts safeguards voting rights; as the United States Supreme Court has noted, the sole limitations on judicial deference to state apportionment policy are the substantive constitutional and statutory standards to which reapportionment plans are subject. Upham, 456 U.S. at 42. For several reasons, however, I cannot agree that voting rights violations have been proven in this case.

First and foremost, as far as voting rights are concerned,[4] the plaintiffs' allegation is that because of population shifts, the apportionment plan established by court order in 1982 now dilutes minority voting rights in violation of section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The 1982 court-ordered apportion-

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[1] The majority asserts that in devising its plan, the state court simply adopted the curative amendments passed by the legislature, but vetoed by the governor. However, in its order adopting its legislative redistricting plan, the state court specifically stated that because the curative amendments had not been adopted into law, they were not entitled to the deference to which Chapter 246 was entitled. Cotlow v. Growe, No. C8-91-985 at 11 (Minn. 5p. Redistricting Panel, Dec. 9, 1991).

[2] In taking as its starting point the legislature's plan and making only those changes necessary to correct its defects, the state court followed the path of numerous federal courts that have deferred to state reapportionment policy by making only those changes that are statutorily or constitutionally required. See, e.g., Cook v. Luckett, 735 F.2d 912, 918 (5th Cir. 1984); Buskey v. Oliver, 574 F.Supp. 41, 43 (M.D.Ala. 1983); Farnum v. Burns, 561 F.Supp. 83, 92 (D.R.I. 1983); Rybicki v. State Bd. of Elections, 574 F.Supp. 1082, 1125 n.108 (N.D.Ill. 1982); Terrazas v. Clements, 537 F.Supp. 514, 528 (N.D.Tex. 1982).

[3] I find it disturbing that the majority reaches its conclusions on voting rights issues without having had the benefit of briefs or oral arguments on the voting rights violations that it purports to find.

[4] Plaintiffs have raised challenges based on the United States and Minnesota constitutions, as well as challenges based on the Voting Rights Act. In their papers and arguments, plaintiffs did not emphasize their voting rights claims; instead, they focused almost exclusively on their other claims.

Moreover, the majority's assertion that the Emison plaintiffs urged the creation of a super-majority minority senate district in Minneapolis is not strictly accurate. The Emison plaintiffs argued instead that it was "possible" to create a senate district in Minneapolis with a higher concentration of African-Americans than that present in the legislative plan. Thus, they proposed the creation of a senate district with an African-American population of 44.5%; that is, they requested a senate district in which African-Americans constituted a plurality. Nowhere did they urge this Court to adopt a theory that super-majority minority senate districts were necessary in order for a redistricting plan to comply with the strictures of the Voting Rights Act. Pl.'s Hem. Regarding the Unfairness of the Legislature's Redistricting Plan at 13-14.

ment, however, was superseded when the legislature passed Chapter 246 and the state court declared Chapter 246 to be validly enacted law. When Chapter 246 became law, plaintiffs' allegations of voting rights violations in the 1982 apportionment were rendered irrelevant. Significantly, no party to this suit has alleged, much less proved, that Chapter 246 violates section 2 of the Voting Rights Act; rather, plaintiffs have asserted only that their proposed plan "better" preserves the political power of minorities. There is no requirement, however, that a lawfully enacted reapportionment plan that complies with the Voting Rights Act be set aside in favor of an allegedly "better" plan.[5]

Secondly, there is in my opinion simply no evidence in the record to support the majority's determination that an unlawful dilution of minority voting rights has been proven. As an initial matter, I am not persuaded by the majority's conclusion that this court is not bound to follow the three-part Gingles test in determining whether dilution has occurred. Reasoning that there are no salient differences between challenges to multi-member districting

[5] It is not at all clear that any of the plaintiffs' plans, or the plan that the majority now adopts, protects the rights of minority voters better than the legislature's own plan. The record reflects that the legislature took extraordinary steps to assure minority participation in the creation of its plan and to assure that minority interests were adequately protected in the plan it ultimately adopted. After conducting public hearings and seeking the input of leaders of such groups as the St. Paul Urban League, the Urban Coalition of Minneapolis, the Minnesota Indian Affairs Council, the Spanish Speaking Affairs Council, the Council on Black Minnesotans, the Minnesota Council on Asian-Pacific Affairs, and the National Association for the Advancement of Colored People, the legislature developed a plan that included one house district in which minorities constituted a super-majority, two house districts in which minorities constituted a bare majority, one house district in which minorities constituted a near majority, and one senate district in which minorities constituted a near majority. Mem. of the Minn. Legislature in Response to the Emison Pl.'s Proposed Redistricting Plans at 9-11.

schemes and challenges to single-member districting schemes, numerous courts have concluded that the Gingles test applies to both types of voting rights challenges. See e.g., Jeffers v. Clinton, 730 F.Supp. 196, 205 (E.D.Ark. 1989), aff'd, 111 S.Ct. 662 (1991); McDaniels v. Mehfoud, 702 F.Supp. 588, 591 (E.D.Va. 1988), app. dismissed, 927 F.2d 596 (4th Cir. 1991); Hastert v. State Board of Elections, 777 F.Supp. 634, 655 (N.D. Ill. 1991); Neal v. Coleburn, 689 F.Supp. 1426, 1435 (E.D.Va. 1988); Williams v. City of Dallas, 734 F.Supp. 1317, 1413 (N.D.Texas 1990); see also Romero v. City of Pomona, 883 F.2d 1418, 1423 (9th Cir. 1989) (concluding that the three-part Gingles test merely explains which of the indicia of dilution are most relevant in proving a section 2 violation). There has been, in this case, no effort to establish that the Gingles requirements can be met.

Even if the three-part Gingles test does not apply in this case, however, I cannot agree with the majority that the record establishes that voting rights violations exist. Before addressing the precise standard to be applied to section 2 challenges to multi-member districting plans, the Gingles Court reiterated the basic principles that must guide courts considering voting rights cases. The Court noted that although the legislative history accompanying section 2 sets forth a flexible, fact-intensive test for section 2 violations, it also places three limitations on the circumstances in which section 2 violations may be proved:

> First, electoral devices . . . may not be considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. . . . Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. . . Third, the

> results test [set forth in § 2 and its legislative history) does not assume the existence of racial bloc voting; plaintiffs must prove it.

Gingles, 106 S.Ct. at 2764 (citations omitted). I believe that in concluding that voting rights violations have been established in this case, the majority disregards each of these three basic principles of voting rights jurisprudence.

The majority's holding is, in effect, a conclusion that a redistricting plan that does not contain a super-majority minority senate district in Minneapolis is an electoral device that is per se violative of section 2.[6] In an effort to establish that the totality of the circumstances show that a plan without a super-majority minority district results in unequal access to the electoral process, the majority searches far beyond the record, ultimately coming to rest upon four supposed indicia of unequal electoral access: a provision of the Minnesota Constitution (repealed more than a century ago) limiting voting rights to white persons, two school desegregation cases from the 1970s, a newspaper article reflecting performance gaps between minority and non-minority students in Minneapolis, and the fact that Chapter 246 pits no incumbent Minneapolis senators against each other. Problems such as school segregation and academic performance gaps, as well as past instances of discriminatory voting practices, are undeniably matters of concern for our society; from the record before this Court, however, I am unable to conclude that the problems reflect or

[6] There may well be merit in creating a district with a super-majority of minority voters as a remedy for a voting rights violation. Rather than turning to the technique as a remedial measure, however, the majority relies on the absence of such districts to establish a violation of the Voting Rights Act. Such a reliance is, I believe, erroneous in law as well as in fact.

result from minority vote dilution at the legislative level. The majority's reliance on these indicia to augment a silent record strains credulity.

Having concluded that a districting plan without a super-majority minority senate district in Minneapolis is a dilutive electoral mechanism, the majority violates the second basic principle of voting rights jurisprudence by concluding that the conjunction of that device and a lack of proportional representation in Minneapolis establishes a violation of section 2. The number of minority legislators from Minneapolis is not proportional to the percentage of minorities who live in Minneapolis. The only minority representative from Minneapolis currently serving in the Minnesota Legislature was elected from a super-majority minority district.[7] Therefore, the majority reasons, the lack of proportional representation flows from the absence of sufficient super-majority minority districts in Minneapolis. Section 2, however, specifically cautions against resting findings of voting rights violations on the lack of proportional representation. See 42 U.S.C. § 1973(b) ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population").

Finally, rather than requiring the plaintiffs in this case to

[7] It is worth noting that several legislative districts outside the City of Minneapolis have elected members of minority groups to the Minnesota Legislature, despite the fact that those districts do not contain a super-majority of minority voters. Those districts include Senate District 4, with a total minority population of 15%, House District 650, with a total minority population of 24%, and House District 40A, with a total minority population of 7%. See Minority Population Report dated August 20, 1991, provided to the Special Masters at the September 16, 1991 meeting.

prove the existence of racial bloc voting,[8] the majority assumes its existence. As the Gingles court recognized, "courts and commentators agree that racial bloc voting is a key element of a vote dilution claim." Id. at 2769 (citations omitted). The existence of racial bloc voting is typically proven by statistics that correlate voting patterns with the race of the voter and the candidate. As the majority acknowledges, no such statistics have been advanced in this case; the majority attempts to sidestep this lack of proof by relying on a law review article stating that "racial block voting [is] all but inevitable in the vast majority of cases." Maj. Op. at 23 n. 30 (citing Howard & Howard, The Dilemma of the Voting Rights Act--Recognizing the Emerging Political Equality Norm, 8 Colum. L. Rev. 1615, 1625 (1983)). The majority's assumption that racial bloc voting is "all but inevitable" in this case, however, is precisely the assumption that the Supreme Court and the legislative history accompanying section 2 forbid. The broad, generalized statements of commentators cannot substitute for evidence of racially polarized voting.

The majority's assumption of racially polarized voting appears again in its conclusion that super-majority minority districts are necessary for minorities to exercise their political rights in Minneapolis. The majority reasons that because the 1982 senate district containing the highest concentration of minorities failed to elect a minority representative in the last election, higher concentrations of minorities are a requisite part of a valid redistricting plan. Significantly absent from the record, however, are facts demonstrating that less than super-majority concentrations of

[8] The legal concept of racial bloc voting, or racially polarized voting, refers to the existence of a correlation between the race of voters and the selection of candidates. Gingles, 106 S.Ct. at 2779.

minorities have resulted in limited access to the electoral process. In short, the record simply does not support a finding of voting rights violations.

II. The Necessity of Following State Policy

However, it is immensely important to recognize that, even if the record did support a finding of voting rights violations, the majority's wholesale rejection of the state plan would be unwarranted. Correcting voting rights violations does not require this Court to jettison Minnesota's validly enacted reapportionment plan; any voting rights defects may--indeed, under Upham and Weiser must -- be remedied by modifying the state plan.

To justify abdicating its obligation to follow the state policy embodied in Chapter 246, the majority attempts to distinguish the facts of this case from those in Weiser and Upham. The majority asserts that this Court, unlike those in Weiser and Upham, has before it not only the state's redistricting plan, but the state policies reflected in Minnesota's constitutional requirement of equal apportionment and in the legislature's bipartisan resolution establishing the criteria for its redistricting plan. This, however, is a distinction without a difference, because in my opinion, Chapter 246 conflicts with neither of those statements of state policy. Moreover, if Chapter 246 did conflict with other state policies, Upham and Weiser would require this Court to reconcile the conflicts.

The majority also suggests that it need not follow the state policy expressed in Chapter 246 because it would be difficult to do so. In my opinion, the majority exaggerates the difficulties inherent in basing a court-ordered plan on Chapter 246; the state court, after all, found it possible to correct Chapter 246's constitu-

tional defects.[9] The fact that the majority finds defects based on the Voting Rights Act, and not the U.S. Constitution, does not alter this Court's obligation to limit its remedial measures to correcting those defects; Upham, too, involved voting rights challenges. Moreover, the sole voting rights defect identified by the majority is the lack of a super-majority minority senate district in Minneapolis. Surely a defect in a single district not require this Court to discard the legislative plan in its entirety.[10] Finally, I see nothing in Weiser or Upham limiting the obligation to follow state policy to instances in which it be accomplished with ease.

In substituting its own plan for that of the state, the majority defies the Supreme Court's mandate that reapportionment remedies be limited by the scope and nature of the violation. Upham, 456 U.S. at 42 (citing Whitcomb v. Chavis, 403 U.S. 124 (1971)). More fundamentally, the majority defies the policy o judicial deference to legislative action that underlies the Supreme Court's mandate. This Court attempted, in its injunction, to prohibit the Minnesota court from finalizing its reapportionment plan. The United States Supreme Court rejected that approach. Having failed

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[9] The majority asserts that the parties' failure to provide this Court with a map of Chapter 246 made it impossible for the Court to rely on Chapter 246 in creating its plan. In its consideration of Chapter 246, the state court had before it maps depicting the redistricting plan embodied in Chapter 246. Cotlow v. Growe, No. C8-91-985 at 10, 15 (Minn. Sp. Redistricting Panel, Dec. 9, 1991). If the parties neglected to provide this Court with these resources, it was an oversight that could surely have been easily corrected.

[10] In Upham, the district court devised its own plan for four districts, rejecting the legislature's plan for those districts the Supreme Court held that even though the district court followed the legislature's plan in all other respects, it erred in adopt its own plan in the four districts. In the instant case, the majority's action far exceeds the action struck down in Upham, because here, the majority adopts its own plan not just for a few isolated districts, but for the entire state.

to successfully enjoin the state court's reapportionment plan, the majority, instead of staying its hand allowing the state plan to proceed, reaches out in an invalid a transparent second attempt to accomplish the same purpose.

The people of Minnesota are the real losers in this unprecedented battle between two courts. Hopefully, the United States Supreme Court, upon appropriate application, will quickly move to resolve these issues.

The court's plan of redistricting was developed without regard to partisanship. Adoption of the court's plan insures that partisan motivation, if in fact it existed in the plans presented to us, is not perpetuated.

I respectfully dissent.

/s/
Harry H. MacLaughlin
United States District Court Judge

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

DISTRICT OF MINNESOTA - FOURTH DIVISION

James Emison, et al

v. **JUDGMENT IN A CIVIL CASE**

Joan Growe, Secretary of State of the
State of Minnesota, et al.

CASE NUMBER: 4-91-202

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendant Joan Growe, the duly elected and qualified Secretary of State of the State of Minnesota, in her official capacity, as the chief election officer of the State of Minnesota, and all those acting by and under her authority, accept filings and conduct elections only in accordance with the provisions of this order, and in confirmity with the election statutes of the State of Minnesota which are not inconsistent therewith. Defendant Growe and those acting by and under her authority are enjoined from accepting filings otherwise than in conformity with this order, or from declaring the results of any such election held otherwise than in conformity with the order of

this court, except as may be provided by law for the appeal of this order to the Supreme Court of the United States.

Jurisdiction is retained for the purpose of making any further orders deemed necessary to insure the effectuation of our order adopting a state legislative redistricting plan and a congressional redistricting plan for the State of Minnesota, and this order permanently enjoining interference with said redistricting plans.

Appropriate orders taxing costs against Joan Growe, Secretary of the State of the State of Minnesota, will be entered for Masters' fees and expenses, assistants' fees and expenses, printing expenses, computer expenses, and miscellaneous supplies and equipment.

February 19, 1992 — *Date*

FRANCIS E. DOSAL — *Clerk*

/s/ — *(By) Deputy Clerk*

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,	)	Court File No. Civ. 4-91-202
Plaintiffs,	)	
vs.	)	AMENDED COMPLAINT
Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,	)	
Defendants.	)	

Plaintiffs, for their cause of action against defendants, allege and state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. Section 1331, 28 U.S.C. Section 1343(a)(3)-(4), 28 U.S.C. Section 2284, 42 U.S.C. Section 1973, and 42 U.S.C. Sections 1983 and 1988. Declaratory and injunctive relief are appropriate under 28 U.S.C. Sections 2201 and 2202.

2. Venue is proper under 28 U.S.C. Section 1391.

PARTIES

3. Plaintiffs are citizens and qualified voters of the United States and the state of Minnesota. Plaintiffs reside in the following counties, legislative districts, and congressional districts and are of the racial origin indicated:

Plaintiff	County	Legislative District	Congressional District	Race
James W. Emison	Hennepin	43B	Sixth	White
Judy Fairbanks	Becker	10A	Seventh	Native-American
Marie Iverson	Dakota	38B	Third	White
Ken Dean	Stearns	17B	Seventh	White
Steve Castillo	Ramsey	66B	Fourth	Hispanic
Lew Freeman	Hennepin	60B	Fifth	African-American
Yao Lo	Ramsey	63A	Fourth	Asian

4. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters of the United States and the state of Minnesota who are similarly situated by denial of their legal rights through the use of current legislative and congressional districts as further stated below. The class of persons denied their legal rights through the current legislative and congressional districts is so numerous that joinder of all members is impracticable. The legality of the plans of state legislative districts set forth in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152) and reflected in Minnesota Statutes, Sections 2.019 and 2.042-2.702, as utilized and enforced by defendants, presents questions of fact and law common to the class. The legality of the scheme of congressional districts set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982), as

utilized and enforced by defendants, presents additional questions of fact and law common to the class. The claims of the named individuals are typical of the claims of the members of the class. The individuals named as plaintiffs will fairly and adequately protect the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, and defendants have acted and will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. Defendant Joan Growe is the duly elected and qualified Secretary of State of the state of Minnesota. In her official capacity, pursuant to Minnesota Statutes, Chapters 200-211, she is the chief election officer of the state of Minnesota and is responsible for a variety of election duties, such as giving notice of offices to be voted on in the next election, accepting affidavits of candidacy from candidates for certain public offices, supervising the preparation and distribution of ballots, issuing certificates of election to certain successful candidates, receiving election returns, distributing information on election laws, serving on the State Canvassing Board, and other duties necessary for the conduct of elections in the state of Minnesota.

6. Defendant Mark Lundgren is the duly qualified and acting auditor of Carver County, state of Minnesota. In his official capacity, pursuant to Minnesota Statutes, Chapters 200-211, he is the chief election officer for Carver County and is responsible for a variety of election duties, such as receiving registrations to vote, maintaining a current list of registered voters for districts in the county, receiving applications for and processing of absentee ballots, taking filings of candidates for certain elective offices,

furnishing a list of appropriate election judges for election precincts, preparing certain election materials, taking delivery of election returns, tabulating votes, maintaining election records, providing certificates of election to certain successful candidates, and other duties necessary for the conduct of elections in the state of Minnesota.

7. This action is brought against Defendant Mark Lundgren individually and as a representative of a class of all other county auditors in the state of Minnesota, the class being so numerous to make it impracticable to join them in this action. The legality of the plan of state legislative districts set forth in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152) and reflected in Minnesota Statutes, Sections 2.019 and 2.042-2.702, as utilized and enforced by county auditors, presents questions of fact and law common to the class. The legality of the scheme of congressional districts set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) as utilized and enforced by county auditors, presents additional questions of fact and law common to the class. The defenses of the representative party are typical of the defenses of the class and the representative will fairly and adequately protect the interests of the class. The prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards for plaintiffs and plaintiffs have acted and will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

8. Pursuant to 28 U.S.C. Section 2284(b)(2), notice of this action will be given to the Governor and Attorney General of the

state of Minnesota by transmitting to each a copy of this Complaint by certified mail.

COUNT I - CONGRESSIONAL REDISTRICTING

9. Paragraphs 1 - 8 of this Complaint are realleged and incorporated by reference as if fully stated herein.

10. Article I, Section 2 of the Constitution of the United States provides that:

> The house of representatives shall be composed of members chosen every second year by the people of the several states....
>
> * * * *
>
> Representatives...shall be apportioned among the several states. ...

U. S. Const. art. I, §2. This provision guarantees to the citizens of each state that their vote shall be equally effective as any other vote cast in an election and that congressional representatives shall be elected on the basis of equal representation of the individual voters in the state. Further, this provision guarantees that congressional representation shall be equally apportioned throughout a state in districts of equal population.

11. Section 1 of the Fourteenth Amendment to the Constitution of the United States Constitution provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state that their vote shall be equally effective as any other vote cast in an election and that congressional representatives shall be elected on the basis of equal representation of the individual voters in the state.

Further, this provision guarantees that congressional representation shall be equally apportioned throughout a state in districts of equal population.

12. Any plan of congressional districts that does not meet constitutional standards discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts, in violation of the rights afforded under Article I, Section 2 and the Fourteenth Amendment. Any action of defendants in enforcing or implementing such a plan violates the constitutional rights of plaintiffs and similarly situated citizens and voters of Minnesota.

13. Minnesota's current congressional districts were established and remain in force by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982).

14. On information and belief, the United States Department of Commerce, Bureau of Census, has issued statistical data from the 1990 census showing that the congressional districts ordered by this Court are no longer equally apportioned. According to this data, the current populations of the congressional districts, the 1980 populations, and the net and percentage changes are as follows:

District	1980 Population	1990 Population	Net Change	%Change
First	509,460	527,423	+17,963	+3.53%
Second	509,500	480,079	-29,421	-5.77%
Third	509,499	665,555	+156,056	+30.63%
Fourth	509,499	538,416	+29,913	+5.87%
Fifth	509,506	501,550	-7,956	-1.56%
Sixth	509,505	653,112	+143,607	+28.19%
Seventh	509,495	518,162	+8,667	+1.7%
Eighth	509,506	490,799	-18,707	-3.67%

15. The Legislature of the state of Minnesota ("the Legislature") possesses state constitutional authority to prescribe the boundaries of congressional districts at their first session following each federal decennial census. Following the 1980 census, the Legislature failed to establish new congressional districts in accordance with constitutional requirements. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, has received census data showing that congressional districts established by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff 'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) are no longer equally apportioned and the Legislature has failed to reapportion Minnesota's congressional representatives among new districts of equal population. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new congressional districts in accordance with legal requirements.

16. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for Minnesota's congressional representatives based on current congressional districts, unless restrained by this Court.

17. Plaintiffs allege that they intend to and will vote in the 1992 primary and general elections for congressional representatives. If these elections are conducted on the basis of current congressional districts, or on the basis of new districts that do not meet legal requirements, plaintiffs and other similarly situated voters and citizens will be denied their constitutional rights.

COUNT II - LEGISLATIVE REDISTRICTING

18. Paragraphs 1 - 16 of this Complaint are realleged and incorporated by reference as if fully stated herein.

19. Section 1 of the Fourteenth Amendment to the Constitution of the United States provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state that their vote shall be equally effective as any other vote cast in a federal and state election and that state legislative representatives shall be elected on the basis of equal representation of the individual voters in the state. Further, this provision guarantees that state legislative representation shall be equally apportioned throughout a state in districts of equal population.

20. Any plan of state legislative districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights afforded under the Fourteenth Amendment. Any action of defendants in enforcing or implementing such a plan violates the equal protection and due process rights of plaintiffs and other similarly situated citizens and voters of Minnesota.

21. Minnesota's current state legislative districts were established and remain in force by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and are reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702.

22. On information and belief, the United States Department of Commerce, Bureau of Census, has issued statistical data from

the 1990 census showing that the state legislative districts as ordered by this Court are no longer equally apportioned.

23. On information and belief, the United States Department of Commerce, Bureau of Census, has issued statistical data showing substantial increases in minority populations in the state of Minnesota since the prior census. These minority populations include Hispanics, Asians, Native-Americans, and African-Americans.

24. In LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), this Court by an Order dated December 29, 1981, adopted mandatory criteria for valid plans apportioning the Minnesota Legislature. The criteria included a provision that a valid redistricting plan shall preserve the voting strength of minority populations and will, whenever possible, increase the probability of minority representation from areas of sizable concentrations of minority population. On information and belief, the state legislative districts as ordered by this Court no longer comply with that criterion.

25. The Legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first session following each federal decennial census. Following the 1980 census, the Legislature failed to establish new state legislative districts in accordance with legal requirements. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, has received census data showing that state legislative districts established by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), are no longer equally apportioned and have diluted minority voting strength. The Legislature has failed to reapportion Minnesota's state legislative representation among new districts of equal population and has failed to draw new districts that avoid

minority vote dilution. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new legislative districts in accordance with legal requirements and the criterion adopted by this Court that a valid plan shall preserve the voting strength of minority populations and, whenever possible, increase the probability of minority representation from areas of sizable concentrations of minority population.

26. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for state legislative representatives based on current state legislative districts, unless restrained by this Court.

27. Plaintiffs allege that they intend to and will vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of current state legislative districts, or on the basis of new districts that do not meat legal requirements, plaintiffs and other similarly situated voters and citizens will be denied their constitutional rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and denied their rights under prior orders of this Court.

COUNT III - VOTING RIGHTS ACT, SECTION 2:
WHITE EARTH AND RED LAKE RESERVATIONS

28. Paragraphs 1 - 26 of this Complaint are realleged and incorporated by reference as if fully stated herein.

29. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973 ("Voting Rights Act"), provides that:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in

a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The statute guarantees that any plan of state legislative districts shall not be employed to minimize, cancel out, or dilute a racial minority's effective participation in the political process by denying its members less opportunity than other members of the electorate to elect or influence the election of legislators of their choice. Any plan of state legislative districts that has the effect of denying such opportunity and any action of defendants in enforcing or implementing such a plan violate the requirements of the Voting Rights Act.

30. White Earth Reservation ("White Earth"), established by treaty in 1867, is a federally recognized reservation for the White Earth Band of the Minnesota Chippewa Tribe located in the state of Minnesota. White Earth comprises Mahnomen County and

portions of Clearwater County and Becker County, and it contains a significant population of Native-Americans. Additional concentrations of Native-Americans reside near the reservation.

31. Under the current plan for legislative districts as established by this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, White Earth has been split into legislative districts 2B, 9B, and 10A.

32. Red Lake Reservation ("Red Lake"), established by treaty in 1863, is a federally recognized reservation for the Red Lake Band of the Minnesota Chippewa Tribe located in the state of Minnesota. RedLake comprises portions of Beltrami County and Clearwater County, and it contains a significant population of Native-Americans. Additional concentrations of Native-Americans reside near the reservation.

33. Under the current plan for legislative districts as established by this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, Red Lake has been split into legislative districts 1A and 2B.

34. Plaintiffs allege that the unnecessary fragmentation of the White Earth and Red Lake reservations into four separate legislative districts under the current plan of state legislative districts minimizes, cancels out, and dilutes the effective participation in the political process by Native-Americans residing on and near those reservations, denying them equal opportunity to elect or influence the election of representatives of their choice, in violation of their rights afforded under the Voting Rights Act. Plaintiffs further allege, on information and belief, that a state legislative district could be created that would not so dilute the Native-American vote on and near these reservations.

35. On information and belief, the Legislature has been aware since 1982 that White Earth and Red Lake are fragmented into four legislative districts, thereby diluting the Native-American vote on and near these reservations for state legislative races. During that time, the Legislature failed to draw new districts removing this fragmentation. The Legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first session following each federal decennial census. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, continues to be aware of the fragmentation and minority vote dilution on and near the reservations under the Voting Rights Act and has failed to establish new districts in compliance with federal law. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new legislative districts in accordance with the requirements of the Voting Rights Act.

36. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for state legislative representatives based on current state legislative districts, unless restrained by this Court.

37. Plaintiff Judy Fairbanks is an enrolled member of the White Earth Band of the Minnesota Chippewa Tribe and resides on the White Earth reservation. She alleges that she intends to and will vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of current state legislative districts, she and other similarly situated voters and citizens will be denied their rights under the Voting Rights Act.

COUNT IV - VOTING RIGHTS ACT, SECTION 2: DISTRICT 60B

38. Paragraphs 1 - 36 of this Complaint are realleged and incorporated by reference as if fully stated herein.

39. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973 ("Voting Rights Act"), provides that:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The statute guarantees that any plan of state legislative districts shall not be employed to minimize, cancel out, or dilute a racial minority's effective participation in the political process by denying its members less opportunity than other members of the

electorate to elect or influence the election of representatives of their choice. Any plan of state legislative districts that has this effect and any action of defendants in enforcing or implementing such a plan, violates the requirements of the Voting Rights Act.

40. District 60B is a current state legislative district located in south Minneapolis. On information and belief, District 60B had a 33% minority population at the formation of the district in 1982 under the current plan for legislative districts as established by this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702. Due to population growth and population shifts, the minority population of District 60B has, on information and belief, grown to 46% as of the 1990 census.

41. On information and belief, District 60B is adjacent to or near several other state legislative districts in south Minneapolis that, as of the 1990 census, have substantial minority populations. These districts include Districts 59A, 59B, 60A, 61A, 61B, 62A, and 62B.

42. Plaintiffs allege that the current plan of state legislative districts unnecessarily fragments the minority population in south Minneapolis into multiple districts and minimizes, cancels out, and dilutes the effective participation in the political process by minorities residing in south Minneapolis, denying them equal opportunity to elect or influence the election of representatives of their choice in violation of their rights under the Voting Rights Act. Plaintiffs further allege, on information and belief, that one or more new state legislative districts could be created that would not so dilute the vote of the minority population residing in current District 60B and adjacent districts.

43. The Legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first

session following each federal decennial census. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, is aware of the fragmentation and minority vote dilution in south Minneapolis under the Voting Rights Act and has failed to establish new districts in compliance with federal law. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new legislative districts in accordance with the requirements of the Voting Rights Act.

44. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for state legislative representatives based on current state legislative districts, unless restrained by this Court.

45. Plaintiff Lew Freeman is an African-American and a resident of District 60B. He alleges that he intends to and will vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of current state legislative districts, he and other similarly situated voters and citizens will be denied their rights under the Voting Rights Act.

WHEREFORE, plaintiffs pray for the following relief:

a. That a special three judge court be called to hear and determine this matter, pursuant to 28 U.S.C. Section 2284(a).

b. That the Court declare that the plan of congressional districts ordered in LaComb v. Growe. 541 F. Supp. 145 (D. Minn. 1982)(Civ. 41-81-474) aff 'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) violates plaintiffs' constitutional rights under Article I, Section 2 and the Fourteenth Amendment to the Constitution of the United States.

c. That the Court declare that the plan of state legislative districts as ordered in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, violates plaintiffs' rights of due process and equal protection under the Fourteenth Amendment to the Constitution of the United States.

d. That the Court declare that the plan of state legislative districts as ordered in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, violates the requirements of the Voting Rights Act by unlawfully diluting the voting strength of Native-Americans residing on or near the White Earth and Red Lake reservations.

e. That the Court declare that the plan of state legislative districts as ordered in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, violates the requirements of the Voting Rights Act by unlawfully diluting the voting strength of the minority population residing in or near District 60B.

f. That the Court dissolve its orders establishing the plans for congressional and state legislative districts made in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) (Civ. 41-81-414) aff 'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) and LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152).

g. That the Court issue a permanent injunction and judgment decreeing that the current plans for congressional and state legislative districts are not now valid plans of state legislative and congressional apportionment.

h. That the Court issue a permanent injunction enjoining defendants from taking any action related to carrying out their official duties in conducting primary or general elections for state legislative and congressional representatives based on the districts ordered in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) (Civ. 41-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) as reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, and LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152).

i. That the Court inform the Legislature and the Governor of the pendency of this action and that the Court will retain jurisdiction to determine if the Legislature has passed and the Governor has signed legislation forming new congressional and state legislative districts that meet legal requirements; that should the Legislature and the Governor fail to enact such legislation, the Court will consider evidence, determine, and order valid plans for congressional and state legislative districts.

j. That the Court consider evidence from plaintiffs, determine, and order valid plans for new congressional and state legislative districts in the event the Legislature and the Governor fail to enact legislation establishing such districts in accordance with legal requirements.

k. That should the Court consider and establish new plans, or review legislative plans, for state legislative districts, the Court require the maximization of Native-American voting strength on and near the White Earth and Red Lake reservations through the consolidation, to the extent possible, of concentrations of Native-Americans on or near the reservations into a single state legislative district.

l. That should the Court consider and establish new plans, or review legislative plans, for state legislative districts, the Court require the maximization of the voting strength of the minority population currently residing in District 60B through the creation of a new state legislative district that consolidates that minority population with adjacent or nearby minority populations currently in other state legislative districts.

m. That should the Court consider and establish new plans, or review legislative plans for state legislative districts, the Court apply to such plans the criterion of preserving voting strength of minority populations and, whenever possible, increasing the probability of minority representation from areas of sizable concentrations of minority population in accordance with the Court's Order dated December 29, 1981 in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152).

n. That the Court order defendants to pay plaintiffs' reasonable attorneys' fees and expenses, expert fees and costs, and other expenses incurred in this action, pursuant to 42 U.S.C. Section 1988.

o. That the Court order such other relief as is just and equitable in the circumstances.

Dated: 3/29, 1991 POPHAM, HAIK, SCHNOBRICH & KAUFMAN, Ltd.

By /s/

Bruce D. Willis Reg. No. 117572
Benson K. Whitney Reg. No. 184019
3300 Piper Jaffray Tower 333-4800
222 Ninth Street South
Minneapolis, Minnesota 55402

Attorneys for plaintiffs James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated, Plaintiffs,	) Court File No. Civil. 4-91-202
vs.	) DESIGNATION OF THREE-JUDGE
Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota, Defendants.	) DISTRICT COURT

****

Upon the application of the requesting judge, The Honorable Harry H. MacLaughlin, for the designation of a three-judge court to hear and determine the above action, I find that the action is one required by Act of Congress to be heard and determined by a three-judge district court;

Therefore, pursuant to 28 U.S.C. § 2284(b)(1), I, Donald P. Lay, Chief Judge of the United States Court of Appeals for the Eighth Circuit, hereby designate the Honorable Donald P. Lay, United States Circuit Court Judge, and the Honorable Paul

Magnuson, United States District Court Judge, to serve with the Honorable Harry H. MacLaughlin, United States District Court Judge, as members of, and with him to constitute the District Court to hear and determine this action.

DATED: April 8, 1991

/s/
Donald P. Lay, Chief Judge
Eighth Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
OFFICE OF THE CLERK

514 U.S. COURTHOUSE
110 SOUTH 4TH STREET
MINNEAPOLIS, MN 55401

FRANCIS E. DOSAL. CLERK
(612) 348-1821
FTS: 777-1821

May 6th, 1991

Re: James Emison, et al -vs- Joan Growe, et al Civil 4-91-202

Dear Counsel:

As you know the above captioned case has been designated to be tried by a Three Judge Panel. Because of the peculiarity of this case, we are requesting that the Clerk's Office be provided with an original and five copies of every pleading that is filed on this matter.

If you have any questions, please don't hesitate to contact us.

Thank you.

Truly yours,

/s/

Luis R. Borges
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Everson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants.

Cv. No. 4-91-202

ORDER

The above matter was before the undersigned United States Magistrate Judge on the motion of the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate to intervene as defendants in this matter. The undersigned having been advised that the parties to this matter either are not opposed to, or take no position with respect to, the motion to intervene,

IT IS HEREBY ORDERED that the motion of the Seventy-seventh Minnesota State House of Representatives and the

Seventy-seventh Minnesota State Senate to intervene in this matter is GRANTED.

DATED: May 15, 1991

/s/
FRANKLIN L. NOEL
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

NOTICE OF PRETRIAL STATUS
AND SCHEDULING CONFERENCE

James Emison, et al. vs. Joan Growe, Secretary of the State of Minnesota, et al.
Civil 4-91-202

Bruce D. Willis & Benson K. Whitney
John R. Tunheim
Robert A. Nicklaus
Michael A. Fahey
John D. French & Michael L. Cheever

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a pretrial status and scheduling conference will be held on Monday, July 22, 1991 at 3:30 p.m. in Courtroom #3, Seventh Floor, 316 North Robert Street, St. Paul, Minnesota, 55101, before the Honorable Donald P. Lay, the Honorable Harry H. MacLaughlin and the Honorable Paul A. Magnuson.

At least five days prior to the conference, counsel shall submit a complete written statement of the case to the Clerk of the Court. Please submit an original and three copies of the statement. Opposing counsel should also be served at least five days prior to the conference. The statement of the case shall include:

(1) a concise statement of the facts;
(2) the specific legal or statutory basis for the claim(s) or defense(s);
(3) names of involved insurance companies, if any;
(4) whether a timely jury demand has been made or will be made in the future;
(5) estimated length of trial, including voir dire;
(6) estimated length of time needed for discovery;
(7) any other appropriate topics.

Consideration will be given at the conference to settlement, stipulations, pretrial scheduling, anticipated trial schedule and other matters suggested by the Court and counsel. Pretrial scheduling will include the following deadlines: third party actions, amendments to pleadings, discovery completion, non-dispositive motions and dispositive motions.

Counsel who will be trying the case should make every effort to be present at the conference. If this is not possible, substitute counsel should be arranged. Counsel attending the conference must have settlement authority or be accompanied by their clients to facilitate settlement.

Dated: /s/
Michael M. Chutich
Calendar Clerk to Judge MacLaughlin

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventh-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendants.

Civil File No. 4-91-202

ORDER

Before: LAY, Circuit Judge, MacLAUGHLIN and MAGNUSON, District Judges.

A preliminary pretrial hearing was held in this case on July 22, 1991. After oral presentations by the respective counsel, the court entered the following order:

The question of a stay or abstention by the federal court pending legislative action or state court proceedings involving similar issues shall be processed as follows:

1. All motions for stay and motions for this court to abstain pending further proceedings by the state legislature and state court shall be filed, with accompanying briefs, on or before August 2, 1991;
2. All objections to said motions for stay or abstention, with accompanying briefs, shall be filed on or before August 9, 1991; and
3. The movants may file a reply brief on or before August 16, 1991.

IT IS SO ORDERED.

DATED: July 23, 1991.

FOR THE COURT:

/s/
DONALD P. LAY, Chief Judge
U.S. Court of Appeals for the
Eighth Circuit, sitting by
special designation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, et al.

v. Civil No. 4-91-202

Joan Growe, Secretary of State
of the State of Minnesota, et al.

Duane Benson, et al.,

v. Civil No. 4-91-603
from DSD
Joan Growe, Secretary of State to HHM
of the State of Minnesota, et al.

ORDER FOR REASSIGNMENT OF COMPANION CASE

Case No. 4-91-202 having been assigned to Judge Harry H. MacLaughlin and Case No. 4-91-603 having later been assigned to Judge David S. Doty, and said matters being companion cases,

IT IS HEREBY ORDERED that Case No. 4-91-603 be assigned to Judge MacLaughlin, nunc pro tunc, without use of the case assignment system.

IT IS FURTHER ORDERED pursuant to this Court's Assignment of Cases Order dated June 11, 1991, the Clerk of Court shall void and reuse a card on the Civil Rights list of the automated case assignment system.

IT IS FINALLY ORDERED that a copy of this order shall be filed in each of the above respective files.

Dated: August 16, 1991 /s/
Harry H. MacLaughlin, Judge
United States District Court

Dated: August 16, 1991 /s/
David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota

Civil File No. 4-91-202

ORDER

State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant.

Court File No. 4-91-603

Pursuant to memorandum opinion filed this date, this court orders as follows:

1. The motion for intervention by Patricia Cotlow, et al. is hereby granted.
2. The action filed by Benson, Dempsey, et al. v. Growe, et al. (Court File No. 4-91-603) is hereby consolidated with the action entitled Emison, et al. v. Growe, et al. (Court File No. 4-91-202).
3. The motion to defer pending further legislative proceeding in the above entitled actions is hereby granted.
4. The motion to abstain pending further state proceedings is hereby denied.
5. The motion to enjoin pending state court proceedings is hereby denied.

6. The redistricting plan for the Minnesota House and Minnesota Senate as well as the congressional districts for the State of Minnesota shall be presented to the court on or before January 20, 1992.

IT IS SO ORDERED.

DATED: August 21, 1991

/s/
Donald P. Lay, U.S. Court of Appeals for the 8th Circuit

/s/
Harry H. MacLaughlin, U.S. District Court

/s/
Paul Magnuson, U.s. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson & Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota Similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota

Civil File No. 4-91-202

MEMORANDUM OPINION

State House of Representatives;
and the Seventy-seventh Minnesota
State Senate,

Defendant Intervenors.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant.

Court File No. 4-91-603

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

PER CURIAM

This action was filed on March 18, 1991, by plaintiffs on behalf of a class of Minnesota citizens and voters. Plaintiffs allege that the current legislative and congressional districts within the State of Minnesota violate the Fourteenth Amendment of the

United States Constitution as well as Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 (1988).[1]

Among the plaintiffs bringing this action are a Native-American, an African-American, an Hispanic-American, and an Asian-American. The defendants are the Secretary of State of Minnesota, Joan Growe, and a proposed class of county auditors. The defendant intervenors in the case are the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate. The plaintiff intervenors are a group of Minnesota voters and citizen who commenced an action in state court, asserting that Minnesota's legislative and congressional districts are violative of the state and federal Constitutions. Pursuant to 28 U.S.C. § 2284(a), (b)(1) (1988), a three-judge panel was designated by the Chief Judge of the circuit to hear and decide the case.

On January 24, 1991, a group of Minnesota citizens and voters commenced a redistricting action in Minnesota state court, Cotlow v. Growe, State of Minnesota, Special District Apportionment Panel (MX 91-001562), previously filed in Hennepin County District Court, State of Minnesota (Court File No. 91-1562). As indicated, this group of plaintiffs has petitioned the court to intervene in the present action and by this memorandum order, that petition for intervention is granted.

During its 1991 session, the Minnesota Legislature passed Chapter 246, S.F. No. 1571, a bill redrawing the state legislative

---

[1] The plaintiffs claim that fragmentation of the White Earth and Red Lake Reservations into multiple legislative districts under the current plan unlawfully dilutes the Native-American vote. They further allege that the current plan of state legislative districts unnecessarily dilutes the vote of the minority population residing in District 60(b) and adjacent districts.

districts.[2] On August 2, 1991, a Minnesota district court held that the Governor of Minnesota failed to properly veto Chapter 246 and consequently allowed that bill to become law. Seventy-seventh Minnesota State Senate and Seventy-seventh Minnesota State House of Representatives v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991). On August 9, 1991, a new federal action was commenced by another group of Minnesota voters who claim that the plan of legislative districts in Chapter 246 violates both the Minnesota and the United States Constitution. See Benson v. Growe, No. 4-91-603 (D. Minn.). That case is now ordered consolidated with the first federal action.

According to the state defendants, the redistricting committees of both the House and Senate plan to meet by September, 1991 to refine Chapter 246 to remove any possible constitutional deficiencies in the bill. The defendants assert that the Minnesota Legislature expects to pass legislation correcting Chapter 246 in January, 1992. The defendants anticipate that the Governor will either approve the bill or the Legislature will override a veto. They claim that the legislative districts will be established in January, 1992. The defendants also assert that the Legislature expects to enact congressional redistricting legislation in January, 1992. It is urged that this court defer not only to the state court proceedings but also to the legislative action that will take place in January, 1992.

The Secretary of State's brief indicates that legislative and congressional redistricting must be completed by March 24, 1992, in order for the 1992 elections to proceed smoothly. This date is

[2] This bill does not attempt to redistrict congressional lines. According to the state defendants, congressional redistricting will not be addressed by the state legislature until January, 1992.

twenty-five weeks before the state primary. According to the Secretary of State, this will allow the local governments an opportunity to redraw precinct lines which, of course, cannot be done before the legislature has been reapportioned. See 1991 Minn. Laws Ch. 349 (H.F. 635). According to the Secretary of State, this deadline also gives the candidate nomination process enough time to work and allows candidates to fulfill their six month residency requirements.

Deference

The threshold question before our court is the motion by the party defendants and the intervenors that this court should defer further action pending legislative approval of a valid redistricting plan and should allow the state judiciary time to assess such plan and either approve it or draw up a plan of its own. The primary authority for this motion is the Supreme Court's decision in Scott v. Germano, 381 U.S. 407 (1965). In Germano, the districting plans for the Illinois Senate were challenged in both federal and state court. The Supreme Court stated as follows:

> We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this court but appropriate action by the States in such cases has been specifically encouraged. . . .
>
> . . . The case is remanded with directions that the District Court enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election of the

members of the State Senate, in accordance with the provisions of the Illinois election law.

Id. at 409. In directing the district court to abstain, the supreme Court stated:

> The District court shall retain Jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan for the State Senate or an order directing that its members be elected at large pending a valid reapportionment by the State itself.

Id. at 409-10.

As the Germano Court pointed out in its directive to the district court, the plan had to be timely adopted and the district court was to retain jurisdiction until a valid plan had been adopted. All the parties in the present case recognize that time is of the essence in making certain that a valid plan is in place in time for the 1992 elections of the members of the State Senate and House, in accordance with the provisions of the Minnesota election laws.

However, we find Germano distinguishable from the present case on two grounds. First, in Germano the action had been commenced in state court in April, 1964, almost two years prior to the time of the election. Upon appeal, the Supreme Court of Illinois held the composition of the Illinois Senate invalid on February 4, 1965, but expressed confidence that the General Assembly would perform its duty to enact a constitutionally valid plan during its then current session, which expired on July 1, 1965. It is important to note that the Supreme Court of Illinois retained Jurisdiction of the case so that it could take such affirmative action as necessary to ensure that a valid plan would be in place for the 1966 election. Thus, one of the distinguishing features of Germano is that the highest court of the state retained jurisdiction so that it

would have time to approve a constitutionally valid plan in the event the Illinois General Assembly failed to act.

In addition, it is clear from the Illinois Supreme Court's holding that the General Assembly would have to enact a reapportionment plan by July 1, 1965, which again was more than a year before the 1966 election. In the present situation, the state case is now just beginning in the state district court. A recent scheduling order has been adopted by the state court with an announcement that it will issue a final redistricting plan on December 20, 1991. We recognize that an appeal from such a court ordered plan would lie to either the Minnesota Court of Appeals or to the Minnesota Supreme Court and that the time necessary for such appellate review would certainly move the case into the early or middle part of 1992. More significantly, the process in the state courts fails to anticipate that final legislative action on both the state and congressional districts will not be completed by the state legislature until January, 1992.

We also note that in the present federal proceedings a Native-American voter and voters from other minority groups have alleged that the current legislative and congressional districts violate Section 2 of the Voting Rights Act of 1965. Section 2 reads as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United states to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

42 U.S.C. § 1973(a) (1988). The state court action does not contain similar allegations. Even if the state court petition is amended to include such allegations, we recognize that in general minority citizens have the right to come to federal court to assert their federal claims and do not have to exhaust state remedies to vindicate their right to have & federal court adjudicate their claims. See Lane v. Wilson, 307 U.S. 268, 274 (1939) (holding that a party generally may resort to federal court without having first exhausted the Judicial remedies of the state courts). Although we recognize that state courts are the final expositors of state law, we also recognize the primacy of federal courts in resolving questions of federal law. See England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415-16 (1964).

The present action implicates the Voting Rights Act of 1965. In Harman v. Forssenius, 380 U.S. 528 (1965), the Supreme Court held that a district court did not abuse its discretion in refusing to abstain to allow the Virginia courts to determine whether a Virginia statute impaired the right to vote in federal elections. The Court indicated that abstention is improper in voting rights cases, stating that "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.'" Id. at 537 (quoting Reynolds v. Sims, 377 U.S. 533, 555 (1964)). The court also noted that "[t]he right [to vote] is fundamental 'because [it is] preservative of all rights.'" Id. (quoting Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)).

Moreover, the Court recognized the dangers associated with applying traditional abstention principles in voting rights cases. The Court stated that "[given] the importance and immediacy of the problem, and the delay inherent in referring questions of state law to state tribunals, it is evident that the District Court did not

abuse its discretion in refusing to abstain." Id. (footnote omitted); see also Edwards v. Sammons, 437 F.2d 1240, 1244 (5th Cir. 1971) (indicating that the delay caused by abstention is not to be countenanced in cases involving the right to vote).

Whatever proposed plan the state agencies ultimately submit must not violate the federal voting rights of the claimants. Accordingly, this court must appraise any reapportionment plan in this light.

Notwithstanding our concerns that deference to the state courts would provide difficult time constraints to make certain that a valid plan is implemented by March, 1992, we do recognize that the Judiciary, whether it be the state court or the federal court, should not substitute its judgment for legislative action in redistricting within a state for purposes, of the House or Senate or for purposes of drawing lines, for valid congressional districts.

Several cases emphasize the proper deference to be given to the legislative function in this instance. In fact, court drawn plans require even greater scrutiny than legislative plans. See Wise v. Lipscomb, 437 U.S. 535, 540 (1978). The Supreme Court stated in White v. Weiser, 412 U.S. 783 (1973):

> From the beginning, we have recognized that "reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." Reynolds v. Sims, 377 U.S. 533, 586 (1964). . . . We have adhered to the view that state legislatures have "primary jurisdiction" over legislative reapportionment. See Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, 676 (1964); Davis v. Mann, 377 U.S. 678, 693 (1964); Roman v.

Sincock, 377 U.S. 695, 709-710, 711-712 (1964); Burns v. Richardson, 384 U.S., at 84-85; Ely v. Klahr, 403 U.S. 108, 114 (1971); Whitcomb v. Chavis, 403 U.S. 124, 160-161 (1971); Sixty-seventh Minnesota State Senate v. Beens, 406 U.S. 187, 195-201 (1972); Mahan v. Howell, 410 U.S., at 327. Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor "intrude upon state policy any more than necessary." Whitcomb v. Chavis, supra, at 160. Id. at 794-95; see also Upham v. Seaman, 456 U.S. 37, 41-42 (1982). In Weiser, the Court emphasized that a district court should not choose between two possible redistricting plans without giving deference to the plan proposed by the state legislature. Id. at 792-96.

The Legislature and the Secretary of State urge this court to give deference to legislative function. We interpret Germano as requiring both state and federal courts to defer to the legislature to draw a valid redistricting plan unless the legislature fails to act in a timely fashion. The state defendants assert that Chapter 246 contains the framework of a reapportionment plan that only needs refinement by the Legislature to be valid. The defendants claim that legislative committees will meet in the fall of 1991 to devise a plan that will be presented to the Legislature in January, 1992.

We feel this court should refrain from adopting a court ordered plan to allow the legislative function to take place. We, therefore, direct the state defendants to submit both a legislative and congressional plan to this court on or before January 20, 1992. This court will hold hearings shortly thereafter to ascertain the validity of the plans so that both the legislative and congressional plans can be in place in March, 1992.

We adopt such a schedule and exercise our discretionary power to defer to the state Legislature in the present case under the good faith allegation made by the Minnesota Legislature. We recognize that the newly filed federal suit challenging Chapter 246 is now before the court. However, we feel that the Legislature should be allowed the opportunity to revise and amend the bill in January, 1992. Under the circumstances, we conclude that it is premature to hold hearings on the validity of the present legislative plan. We will wait until January 21, 1992 to consider the constitutional validity of the plans.

In light of the time constraints and the important federal rights at stake, we should not abstain and defer to the state courts. Under the circumstances, it would be difficult for the state judicial processes, including the Minnesota Supreme Court, to approve the new legislative plan by March, 1992. Even assuming the state court continues to exercise its jurisdiction over the case, whatever plan that it approves would have to be reviewed by this court in terms of the challenges made to the plan under Section 2 of the Voting Rights Act. We are realistic enough to recognize that such a challenge would take considerable time and, therefore, to completely abstain in this case until after the state court acts on the plan proposed by the legislature on or before January 20, 1992, would not be realistic. Cf. Skolnick v. State Electoral Board of Illinois, 336 F. Supp. 839, 870-71 (1971) (enjoining state

Supréme Court mandamus action which sought to modify or set aside the federal court's order adopting a congressional redistricting plan because the nominating petitions were due within four or five weeks).

In deferring to the Legislature and its proposed time frame, we recognize the contingency that the state legislature may not be able to draw up a constitutional plan. For the court to wait until January 21, 1992, to appraise the constitutionality of such a plan and not to have the machinery established to effect a court plan would necessitate a radical departure from Minnesota law and might require legislative and congressional officials to be elected at large. No one wants to reach such a state of emergency. On this basis, this court, recognizing the contingency that a legislative plan may not be constitutionally valid, will soon appoint Masters to appraise both the state legislative districts and the congressional districts. We hereby direct the parties to submit any criteria on which they feel district lines should be drawn to this court no later than October 1, 1991. The court may wish to schedule hearings concerning these criteria after October 1, 1991. However, we wish to point out that this course of action by the court is simply a contingent one that will result in a court ordered plan only in the event that the state legislative body is unable to effect a plan that complies with the United States Constitution and with Section 2 of the voting Rights Act on or before January 20, 1992.

The motion to defer for further legislative action is hereby granted. The motion of the state defendants to otherwise completely defer from review of any legislative plan is denied. The state parties are directed to present the legislative plan for state and congressional redistricting to this court on or before January 20, 1992. This court retains jurisdiction to approve or disapprove of

such plan at that time, or to take any other appropriate action deemed necessary.

In view of our opinion deferring to state legislative action, the plaintiffs' motion requesting this court to enjoin the state courts is hereby denied.

IT IS SO ORDERED.

DATED: August 21, 1991

/s/
Donald P. Lay, U.S. Court of
Appeals for the 8th Circuit

/s/
Harry H. MacLaughlin,
U.S. District Court

/s/
Paul Magnuson,
U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Civil File No. 4-91-202

ORDER APPOINTING SPECIAL MASTERS

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Court File No. 4-91-603

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

IT IS HEREBY ORDERED That Joseph Dixon, John Hoyt, and Gregory L. Wilmes are appointed as Special Masters in the above entitled actions pursuant to F.R. Civ. P. 53.

The appointment as Special Masters is effective commencing September 3, 1991. The Special Masters are authorized to assist the court in evaluating the reapportionment plan to be submitted by the parties in the redistricting of state legislative districts and congressional districts in the State of Minnesota. The Special

Masters shall perform whatever general and specific duties the three-judge court requests them to carry out in the court's duty to pass upon the constitutional plan of reapportionment.

The Special Masters are authorized to employ whatever technical and clerical assistance deemed necessary to the proper performance of their duties.

The compensation to the Special Masters and supporting personnel shall be fixed by the court and shall be taxed to the State of Minnesota at the appropriate time.

DATED: August 27, 1991.

BY THE COURT:

/s/
Donald P. Lay
U.S. Circuit Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

Civil File No. 4-91-202

ORDER APPOINTING SPECIAL MASTERS

The Seventy-seventh Minnesota
State House of Representatives;
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey,
Delores Hettig, Richard Harmon,
David E. Peterson, E.M. Patricia
Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State
of the State of Minnesota,

Defendant.

Court File No. 4-91-603

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

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Masters shall perform whatever general and specific duties the three-judge court requests them to carry out in the court's duty to pass upon the constitutional plan of reapportionment.

The Special Masters are authorized to employ whatever technical and clerical assistance deemed necessary to the proper performance of their duties.

The compensation to the Special Masters and supporting personnel shall be fixed by the court and shall be taxed to the State of Minnesota at the appropriate time.

DATED: August 27, 1991.

BY THE COURT:

/s/
Donald P. Lay
U.S. Circuit Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE

MASTER DOCKET
CIVIL 4-91-202

REAPPORTIONMENT LITIGATION

ORDER

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Rinsgmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin
County Auditor, individually
and on behalf of all County
Auditors of the State of
Minnesota,

Defendant
Intervenor.

The Hennepin County Auditor, Patrick O'Connor, individually and on behalf of all county auditors of the State of Minnesota has moved this Court for leave to intervene as a defendant in the above-captioned consolidated cases.

After full consideration, the motion of the Hennepin County Auditor, Patrick O'Connor, individually and on behalf of all county auditors of the State of Minnesota is hereby granted.

/s/
Judge Harry H. MacLaughlin
United States District Court
For the Panel

DATED: October 2, 1991

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: REAPPORTIONMENT LITIGATION
MASTER DOCKET CIVIL NO. 4-91-202
ORDER ESTABLISHING COURT SCHEDULE

James Emison, Judy Fairbanks,
Marie Iverson, Ken Dean, Steve
Castillo, Lew Freeman, and Yao
Lo, individually and on behalf
of all Citizens and Voters of
the State of Minnesota
similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass,
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Intervening
Plaintiffs,

v.

Joan Growe, Secretary of State
of the State of Minnesota;
Mark Lundgren, Carver County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

The parties in the above titled case have submitted suggested criteria for reapportionment and the court having reviewed the submissions, IT IS HEREBY ORDERED THAT:

1. The parties shall confer and prepare stipulations as to population figures and base maps to be used for purposes of reapportionment.

2. The parties shall submit these stipulations to the court no later than October 10, 1991.

3. The three-judge court will hold a hearing on October 11, 1991, at 9:00 a.m. in Court Room #1 on the fifth floor of the Federal Court Building, 316 N. Robert Street, St. Paul, Minnesota, for the purpose of hearing arguments on the proposed criteria for reapportionment.

Any parties wishing to respond to criteria previously submitted to the court must do so by October 10, 1991. Depending on the stipulations submitted by the parties, the court may entertain discussion at this hearing on matters to which the parties have not been able to stipulate.

4. The court hereby adopts the schedule set forth below:

a. The court intends to issue its opinion on the criteria to be utilized for reapportionment no later than October 22, 1991.

b. The parties shall submit to the court, if they choose, their suggested legislative and congressional plans for reapportionment no later than October 31, 1991.

c. The parties shall file with the court objections to any plans of reapportionment previously submitted no later than November 12, 1991.

d. The submission of said plans shall be fully reviewed by the court, with the understanding that no court plan will be adopted, if the State of Minnesota shall enact a valid constitutional plan on or before January 25, 1992 for redistricting both the state legislature and congressional districts.

The court adopts a time schedule primarily as a means of encouraging the legislature to reapportion the state, as it is obligated to do under Article IV, Section 3 of the Minnesota State Constitution.

IT IS SO ORDERED.
Dated this 4th day of October, 1991.

/s/
DONALD P. LAY
United States Circuit Judge
Sitting by Special Designation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

ORDER

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

IT IS ORDERED That plans for apportioning the Minnesota legislative districts shall be consistent with the following criteria:

1. There shall be sixty-seven (67) Senate districts and one hundred thirty-four (134) House districts.

2. Each district may elect a single member.

3. No House district shall be divided in the formation of a Senate district.

4. The population of the districts will be as nearly equal as possible. Minor deviations in population equality not to exceed plus or minus two percent (2%) will be permitted when necessary to facilitate recognition of other criteria.

5. The districts shall preserve the voting strength of minority populations and will, wherever possible, increase the

probability of such minority representation from areas of sizable concentrations of minority population.

6. The districts shall be compact and consist of convenient contiguous territory. Where contiguity of a district is interrupted by water, this criterion is satisfied if the water does not seriously impede travel within the district.

7. The districts shall be numbered in a regular series. House district 1A shall begin in the northwest corner of the state, with each subsequent district proceeding in order across the state from west to east and north to south until ending in the southeast corner of the state, bypassing in the process the seven-county metropolitan area. The same process then continues for the seven-county metropolitan area outside the cities of Minneapolis and St. Paul, and ends with the cities of Minneapolis and St. Paul.

8. The integrity of existing political subdivision boundaries of the State, e.g., counties, cities, or townships, shall be respected to the extent practicable to minimize division in the formation of a district.

9. An apportionment plan may recognize the preservation of communities of interest in the formation of districts while adhering to the established criteria. To the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified.

10. Previous electorate voting behavior or residency of incumbents shall not be used in the development of any apportionment plan. This information may be used by the court, however, to evaluate the fairness and equity of plans submitted.

IT IS FURTHER ORDERED That plans for apportioning the Minnesota congressional districts shall be consistent with the following criteria:

1. There shall be eight (8) districts.

2. Each district may elect a single member.

3. The population of the districts will be as nearly equal as possible. The maximum permissible deviation from population equality will be plus or minus one-quarter of one percent (.25%).

4. The districts shall preserve the voting strength of minority populations and will, wherever possible, increase the probability of such minority representation from areas of sizable concentrations of minority population.

5. The districts shall be compact and consist of convenient contiguous territory. Where contiguity of a district is interrupted by water, this criterion is satisfied if the water does not seriously impede travel within the district.

6. The districts shall be numbered in a regular series. Congressional district one shall begin in the southeast corner of the state, and congressional district eight shall end in the northeast corner of the state.

7. The integrity of existing political subdivision boundaries of the State, e.g., counties, cities, or townships, shall be respected to the extent practicable to minimize division in the formation of a district.

8. An apportionment plan may recognize the preservation of communities of interest in the formation of districts while adhering to the established criteria. To the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified.

9. Previous electorate voting behavior or residency of incumbents shall not be used in the development of any apportionment plan. This information may be used by the court, however, to evaluate the fairness and equity of plans submitted.

IT IS SO ORDERED.

DATED: October 21, 1991.

/s/
Donald P. Lay, U.S. Court of Appeals for the 8th Circuit

/s/
Harry H. MacLaughlin, U.S. District Court

/s/
Paul Magnuson, U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

ORDER FOR HEARING ON MOTION FOR SUMMARY JUDGMENT

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

Please take notice that the court shall call up for hearing a motion for summary judgment of the plaintiffs, Duane Benson, et al., for hearing on December 4, 1991, at 2:00 p.m., in courtroom number 1, on the fifth floor of the Federal Court Building, 316 North Robert Street, St. Paul, Minnesota. All parties under master docket civil number 4-91-202 in litigation entitled Emison, et al. v. Growe, et al., including the intervening plaintiffs and intervening defendants, shall be notified and shall have an opportunity to be heard on the motion for summary judgment.

IT IS SO ORDERED.

Dated this 27th day of November, 1991.

/s/
DONALD P. LAY
United States Circuit Judge
Sitting by Special Designation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

ORDER OF STAY OF ALL PROCEEDINGS PENDING BEFORE THE MINNESOTA SPECIAL REDISTRICTING PANEL IN COTLOW V. GROWE NO. C8-91-985

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,
and

Patrick O'Connor, Hennepin County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendant
Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

BY DONALD P. LAY, United States Circuit Judge, and PAUL A. MAGNUSON, United States District Judge.

In January a Minnesota state district court suit was commenced challenging the Constitutionality of the legislative apportionment act, Minn. Stat. §§ 2.019, 2.042-2.702 (1990), and the Congressional apportionment plan set forth in LaComb v. Grove, 541 F.Supp. 145. (D. Minn. 1982)[1] A similar action was brought in the federal district court on March 18, 1991, challenging both the state and

[1] Cotlow v. Growe, No. C8-91-985 (Minn. Special Redistricting Panel filed January, 1991). The state district court proceeding was assigned to a three-judge court under the general constitutional authority of the Chief Justice to move and transfer judges from one district to another. See Minn. Stat. § 2.724, subd.1 (1992). No Minnesota law requires the approval of a legislative reapportionment plan by a three-judge court as does the federal statute under 28 U.S.C. § 2284 (1988).

congressional apportionment laws.[2] However, on May 18, 1991, the Minnesota legislature passed Chapter 246, S.F. No. 1571, establishing a legislative redistricting plan. Although the Governor attempted to veto this bill, a state district court ruled on August 2, 1991, that Chapter 246 was validly enacted because the Governor had not timely exercised his veto power.[3] No appeal was taken from this decision. A separate suit was thereafter commenced in federal district court on August 9, 1991, by a group of Minnesota voters to declare Chapter 246 unconstitutional.[4] All federal actions were subsequently consolidated.

Oral representations were made in this court by the Minnesota State Attorney General and the majority legislative party that Chapter 246 was unconstitutional, and that the state legislature planned to take further action in January, 1992, to remove the constitutional deficiencies of Chapter 246 by amendment and to enact a valid congressional redistricting plan. These same parties then requested this court not only to defer further proceedings until the legislature acted but also to abstain from further judicial action because of the ongoing state court proceedings.

In our order of August 21, 1991, this court found that under current principles relating to federal abstention, and under the unique circumstances present in this case, we could not abstain simply because there existed ongoing state court Proceedings. At that time we pointed out that the plaintiff class in the original federal suit included minority members alleging federal voting

[2] Emison v. Growe, No. 4-91-202 (D. Minn. filed March 18, 1991).

[3] The Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Ramsey County Dist. Ct. August 2, 1991).

[4] Benson v. Growe, No. 4-91-603 (D. Minn. filed August 9, 1991).

right violations under Section 2 of the Voting Rights Act of 1965. We also noted the time-consuming nature of the full state court process for review of the legislative plan anticipated in January of 1992, and that an ultimate state court appeal could not be procured to constitutionally define the districts in time for the election process to take place in Minnesota. Under such circumstances, we deemed abstention improper. Other reasons were also clear. There was no allegation of ambiguity in state law requiring state clarification. Furthermore, at the time the federal lawsuit was initiated in Benson v. Growe, no constitutional attack had been made on Chapter 246 in the state court.[5] The only state court suit then pending was the constitutional challenge to the 1982 law.

Notwithstanding our order declining to abstain due to the state court proceedings, we refused to go forward with a judicially created redistricting plan because of the state's assurances to the court that the appropriate committees would be meeting in the fall of 1991 and the legislature would pass a constitutional plan no later than January 17, 1992. It was agreed that the legislature's plan would be submitted to this court for review no later than January 20, 1992. Emison v. Growe, No. 4-91-202, at 10-11 (D. Minn. August 21, 1991) (Memorandum and Order).

In our August 21 order, we observed:

> Notwithstanding our concerns that deference to the state courts would provide difficult time constraints to make certain that a valid plan is implemented by March, 1992, we do recognize that the judiciary whether it be the state court or the federal court, should not substitute its judgment for legislative action in redistricting within a state for purposes of the House or Senate or for purposes of drawing lines for valid congressional districts.

Id. at 8 (emphasis added). We also emphasized the Supreme Court's directive in Reynolds v. Sims, 377 U.S. 533 (1964), that state legislatures have primary jurisdiction over legislative apportionment:

> [R]eapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.

Reynolds, 377 U.S. at 586 (emphasis added).

We continue to adhere to our order of August 21, 1991, and our subsequent scheduling order of October 5, 1991. We write at this time only because the state court has now deemed it appropriate to reveal, in a preliminary Order dated November 21, 1991, its own plan for redistricting the state legislature. It has done this in advance of any legislative action, and has announced that the court plan will be adopted to allow "an orderly appeal process." Cotlow v. Growe, No. C8-91-985, at 16 (Minn. Special Redistricting Panel, Nov. 21, 1991) (Preliminary Order for Judgment on Legislative Redistricting). The state court acknowledges that its plan will not be fully implemented if the legislature does pass a reapportionment plan in January, 1992. Id. However, according to the state panel's order, "we are attempting to have final reapportionment in place in advance of the February precinct caucuses and to provide some certainty to local units of government who are anxious to begin their own redistricting process." Id. (emphasis added). The state

[5] Chapter 246 was not deemed a validly enacted state law until August 2, 1991. However, in Cotlow v. Growe, No. C8-91-985, at 3 (Minn. Special Redistricting Panel, Oct. 1, 1991), the state court found Chapter 246 to be unconstitutional.

panel also adds that "[b]y proceeding as swiftly as possible, we intend to provide any time necessary for an orderly appeal Process and to avoid any duplicative litigation in the federal courts."Id. (emphasis added). Thus, we deem it clear that the state court intends to make its order final before the state legislature acts in January, 1992.[6]

The state court reads Scott v. Germano, 381 U.S. 407 (1965) as establishing "that state courts have a primary obligation to review redistricting issues.[7] Cotlow v. Growe, No. C8-91-985, at

[6] At a state court hearing on December 3, 1991, the three-judge panel orally announced it would issue its final order adopting a legislative redistricting plan within the week. The state court also indicated it would adopt a Congressional redistricting plan by the end of December, 1991.

[7] Germano did encourage state courts to act in reapportionment cases where review could take place in ample time before an election. However, as we discussed in our earlier order:

> [W]e find Germano distinguishable from the present case on two grounds. First, in Germano the action had been commenced in state court in April, 1964, almost two years prior to the time of the election. Upon appeal, the Supreme Court of Illinois held the composition of: the Illinois senate invalid on February 4, 1965, but expressed confidence that the General Assembly would perform its duty to enact a constitutionally valid plan during its then current session, which expired on July 1, 1965. It is important to note that the Supreme Court of Illinois retained jurisdiction of the case so that it could take such affirmative action as necessary to ensure that a valid plan would be in place for the 1966 election. Thus, one of the distinguishing features of Germano is that the highest court of the state retained jurisdiction so that it would have time to approve a constitutionally valid plan in the event the Illinois General Assembly failed to act.
>
> In addition, it is clear from the Illinois Supreme Court's holding that the General Assembly would have to enact a reapportionment plan by July 1, 1965, which again was more than a year before the 1966 election. In the present situation, the state case is now just beginning in the state district court. A recent scheduling order has been adopted by the state court with an announcement that it will issue a final redistricting plan on December 20, 1991. We recognize that an appeal from such a court ordered plan would lie to either the Minnesota Court of Appeals or to the Minnesota Supreme

16 (Minn. Special Redistricting Panel, November 21, 1991) (Preliminary Order for Judgment on Legislative Redistricting). Nothing in Germano recognizes the state court's "primary obligation" to review reapportionment plans. Rather, it makes clear that the primary responsibility for establishing apportionment plans lies with the legislative process. See Germano, 381 U.S. at 409. Thus, we find the issuance of a state court plan before the legislature has acted to be in direct violation of Scott v. Germano and existing federal law. We further believe that the premature issuance of this plan represents an attempt to improperly influence the state legislative process,[8] and encourages appeals on a hypothetical

> Court and that the time necessary for such appellate review would certainly move the case into the early or middle part of 1992. More significantly, the process in the state courts fails to anticipate that final legislative action on both the state and congressional districts will not be completed by the state legislature until January, 1992.

Emison v. Growe, No. 4-91-202 , at 6 (D. Minn., August 21, 1991) (Memorandum and Order).

[8] See Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965) (discussing Smiley v. Holm, 285 U.S. 355 (1932)):

> Our court read U.S. Const. art. I, § 4, as delegating a Federal responsibility to an entity, i.e., the legislature which consists of the House of Representatives and the Senate. The United States Supreme Court, final arbiter of the meaning of the Federal Constitution, construed art. I, § 4, as assigning the task of redistricting for the purpose of Federal elections not to an entity but to a process, that is, the process by which statutory law is made in the particular state exercising the delegated authority. It is this point of divergence in thinking as between the Minnesota Supreme Court and the United States Supreme Court which accounts for the difference in result. It is correct that the entity described by the words "the legislature" in the State of Minnesota consists of the House of Representatives and the Senate and does not include the governor. The Process which is involved in the enactment of statutory law involves exercise of power delegated to the legislature as an entity either by a majority vote of each house

court plan which may never be implemented if the legislature acts as contemplated in January, 1992.

When this court considered the defendant's motion requesting our abstention in this matter, we were concerned about the ability of the state agencies, including the Supreme Court of Minnesota, to timely approve a legislative plan or to adopt one of their own. In weighing the issue of timeliness, we were aware of the Supreme Court's direction in Scott v. Germano, 381 U.S. at 409, that while the district court should defer to the state agencies, it should nevertheless "enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election . . . ." The Supreme Court instructed the federal district court to "retain jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan for the State Senate . . . ." Id. In view of this direction, we reasoned in our August 21, 1991, order that it would be inappropriate to set a date by which the state agencies should act because the legislative process will not be completed until January 20, 1992. All parties agreed that a redistricting plan should be implemented in early February and in any event no later than March 1, 1992. On that basis, we unanimously agreed that it would be improper for us to abstain by reason of the pending state court proceeding. In view of the alleged voting rights allegations

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or by a two-thirds majority of each house depending on whether the governor approves or disapproves of the legislation enacted.

contained in the federal pleadings and not involved in the state pleadings, the concession that Chapter 246 is unconstitutional, and the unique time constraints involved, this court indicated it would be prepared to immediately adopt a valid court plan in the event that the legislative process fails to implement a plan by January 20, 1992.

The state court's action of November 21, 1991, apparently was intended to obviate delay in implementing the state court's plan in the event that the legislature does not pass a duly constitutional plan. This action by the state court was no doubt in response to the concern we expressed in our August order that the state processes would take too long. The problem with this premature action, however, is that any final judgment of the state court can only be advisory because it is contingent upon the failure of the state legislative process to implement a plan in late January, 1992. As such, the state court order lacks ripeness for its proposed appellate review. The order directly interferes with this court's orders of August 21, 1991, and October 5, 1991, requiring utmost deference to the state legislative process under fundamental principles of the United States Constitution as applied through the decisions of the Supreme Court of the United States. See Reynolds v. Sims, 377 U.S. 533, 586 (1964). In light of this court's orders deferring review until the legislative process has run its course in late January of 1992, and its retention of jurisdiction on issues of federal law, the adoption of a plan at this time by the state court does not provide "certainty" that a plan will be "in place" but rather serves to create confusion and concern over its premature finality.

We view the action of the state panel as being in direct violation of federal law and interfering with the continuing jurisdiction of this court. On this basis, with great reluctance,

deference, and concern, we now issue an order necessary in aid Of our jurisdiction enjoining further issuance of the state court plan and staying the effective date thereof until further order of this court.

We are fully cognizant of the heavy responsibility we face in our decision to issue this order. We have determined that the State of Minnesota, its people, the legislature, and the Governor, must be protected from confusing and possible conflicting orders of a state and federal court. We deem it highly improvident that the state court has proposed a plan of its own before the legislature has had a full and complete opportunity to act. Such a plan, if allowed to stand, clearly contains an intimidating message to the legislature and the Governor. There can be no disagreement that the legislative process should be allowed to proceed, unrestricted and free from judicial influence. The integrity of the legislative process must be protected. A court adopted plan issued before the legislature acts inhibits the legislative process.

If, as in Germano, a legislative plan or a state judicial plan could be timely reviewed by the State Supreme Court and be in place in early February, we would have gladly stayed our hand and deferred to the state agencies implementing such a plan. But it was clear in August, and it is clear today that no such legislative plan can be timely reviewed by the state judicial system to be in place by early February. Therefore, to allow the state courts to act before the legislature convenes places our review procedure in jeopardy and casts uncertainty on the validity of any plan. For these reasons we deem our action necessary. We make clear in issuing this order that we do not approve or disapprove of any plan.

In exercising ancillary jurisdiction to issue a writ "necessary or appropriate in aid of" that jurisdiction, it is not necessary that a

final judgment be reached by a federal district court to preserve its jurisdiction or authority over "an ongoing matter [in order to] justify an injunction against actions in the state court." In re Baldwin-United Corp., 770 F.2d 328, 335 (2nd Cir. 1985). The Supreme Court has observed that a federal court may issue an injunctive order under the All-Writs Act "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engrs. 398 U.S. 281, 295 (1970).

Principles of federalism require issuance of this unusual order to protect the exercise of this court's jurisdiction and previous orders requiring deference to the state legislative process and postponing review until the results of such process may be considered in late January, 1992. Assuming the Minnesota courts would allow the state court's advisory order approving a court plan to become final, several issues could arise affecting this court's jurisdiction. If a legislative plan is enacted in January, 1992, but on review by this court is held to be constitutionally invalid, there would exist uncertainty as to the legal effect of the state court plan. The same jurisdictional concerns would exist in the event the legislature fails to enact a plan. If on appeal to the Minnesota Supreme Court, the proposed advisory state court plan is approved before the legislature acted in January, 1992, questions regarding the finality of that judgment would arise under 28 U.S.C. § 1738. Issues would then arise as to whether this court could exercise its jurisdiction to approve an alternative plan, amend the legislative plan, or approve a separate court plan. With the necessity of having a final constitutional plan in place in early February, 1992, additional litigation over jurisdiction regarding which plan should be adopted would simply add to the confusion and uncertainty of

the competing judgments. If no legislative plan is forthcoming, in view of the federal concerns, this court will in timely fashion assume its responsibility to protect under the Constitution of the United States the rights and interests of all parties concerned. The issues before us are not state law questions; they are federal questions involving federal law.

Our action today does not in any way disagree with the principle of encouraging state courts to assume jurisdiction in redistricting cases where there exists ample time for the state judicial machinery to review a legislative plan. We abhor the duplicity of action that has been undertaken in the last several months. Ordinarily this court would defer to an ongoing state court proceeding. Ordinarily comity and deference to state courts would require us to do so. This especially would be true if no voting rights violations were alleged in the federal court, or if there existed ambiguities in state law. When time constraints are involved as here, however, and the federal court determines that state judicial processes will involve undue delay, federal courts are instructed to retain jurisdiction and to act accordingly. See Scott v. Germano, 381 U.S. 407 (1965). Federal abstention is especially inappropriate when the challenge is made at the eleventh hour. We retain jurisdiction of the subject matter and request the parties to appear on January 27, 1992, at 9:00 a.m. for further consideration of all issues before this court.

IT IS THEREFORE ORDERED

Pursuant to the All-Writs Act, 28 U.S.C. § 1651 and as authorized by the second enumerated exception to 28 U.S.C. § 2283, necessary in aid of this court's jurisdiction, we hereby enjoin all proceedings in Cotlow v. Growe, No. C8-9-985, pending before the State of Minnesota Special Redistricting Panel. In this

regard, all previous orders of the above Special Redistricting Panel and any future orders that panel may issue relating to the adoption of any state redistricting plan or Congressional redistricting plan are hereby stayed until further order of this court. All of the parties involved in the state Proceedings are either parties or intervenors in the consolidated cases pending before this court. Each of the parties and their council in the federal proceeding are hereby enjoined from attempting to enforce or implement any order of the above Minnesota Special Redistricting Panel which has proposed adoption of a reapportionment plan relating to state redistricting or Congressional redistricting until further order of this court. The parties so enjoined are as follows:

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

and

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs.

Each party, through their respective counsel, shall be given notice forthwith of this court's order. A copy of this court's order shall be served on the Minnesota Special Redistricting Panel by serving the Clerk of the Appellate Courts, Minnesota Judicial Center. Notice of this order shall also be served upon the Governor of the State of Minnesota, Arnold Carlson, and Hubert Humphrey III, Attorney General of the State of Minnesota.

LET JUDGMENT BE ENTERED ACCORDINGLY.

MacLaughlin, J., dissenting.

I do not agree that the state court should be enjoined from proceeding with its plan of reapportionment. I see no reason why that court is not fully able to consider and decide the reapportionment issues presented to it.

In addition, the November 21, 1991 order issued by the state court seems completely appropriate both as to the law and as to the reapportionment plan it proposes.[1] Clearly Chapter 246 represents state policy which, in my judgment, must be the cornerstone of any new reapportionment plan. The amendments made to Chapter 246 by the state court, subject to comment by the parties and review by that court after its proposed hearing on December 3, 1991, are an attempt by the state court to follow the state policy provided in Chapter 246.[2]

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[1] In a letter to the state court panel dated October 15, 1991, Mr. William J. Davis, Chair of the Political Action Committee for Minneapolis and the Minnesota/Dakotas State Conference of the National Association for the Advancement of Colored People states:

> NAACP representatives from every branch in Minnesota were in attendance [at the NAACP Annual Statewide meeting]. After a thorough review the group voted unanimously to endorse the Legislature's Plan [the plan of the defendant intervenor herein].
>
> It is our belief and feeling that this plan provides the greatest opportunity for "People of Color" to be elected during the upcoming decade. Furthermore, we realize that we will be "locked out or locked in" for the balance of the century. We urge the court to adopt the legislative redistricting plan proposed by the Legislature.

This opinion of the NAACP regarding the defendant intervenor's plan seems to me to be significant and compelling.

[2] Perhaps it would have been wiser for the state court to delay the adoption of any final plan until the state has acted, that is no later than January 17, 1992, as represented to us by the Legislature. In my judgment, assuming speedy action by the Minnesota Supreme Court which I believe would be forthcoming, sufficient

Further, and overriding any other considerations, it seems clear to me that this Court has no legal authority to issue the injunction. The Anti-Injunction Act provides that

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. 28 U.S.C. § 2283.

The Act establishes a general prohibition against federal interference with state court jurisdiction, allowing a federal court to enjoin a state court only if one of the three statutory exceptions applies. Because the statutory prohibition against federal injunctions of state court proceedings "rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction." Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 287 (1970).

Thus, the United States Supreme Court has held that "[p]roceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate court and ultimately this Court." Id. Any doubts regarding the propriety of a federal injunction must be resolved in favor of permitting the state courts to resolve the issues before them. Id. at 297. The majority believes that its injunction is necessary to protect this court's jurisdiction and its orders of August 21 and October 5, and that the injunction therefore falls within the exceptions to the Anti-

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time would still have been available for an appropriate appeal of the state court's plan.

Injunction Act. I cannot agree, however, that the injunction is permissible under the Act.

An injunction is "necessary in aid of jurisdiction" if it is required to prevent a state court from seriously impairing the federal court's authority to decide a case before it. Where a state court and a federal court have concurrent jurisdiction, neither court is free to prevent parties from simultaneously pursuing claims in both courts, and a state court's assumption of jurisdiction does not hinder the federal court's jurisdiction so as to make an injunction necessary to aid that jurisdiction. Id. at 295-96. Both this court and the state court have jurisdiction over the redistricting claims; both courts are thus free to consider and decide the issue, and the state court order in no way interferes with this court's authority to review the constitutionality of the legislature's redistricting plan in accordance with its previous orders.

Nor is injunctive relief warranted to effectuate this Court's August 21st and October 5th orders. The exception allowing a federal court to enjoin a state court when necessary to "protect or effectuate its judgments" was intended to prevent state court relitigation of issues that had already been ruled upon in federal court. Chick Kam Choo v. Exxon Corp., 108 S.Ct. 1684, 1690 (1988). Thus, "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." Id. This court has yet to decide the redistricting issues before it, and therefore lacks authority under the Anti-Injunction Act to preclude the state court from ruling on those issues. The Anti-Injunction Act narrowly circumscribes the circumstances in which federal courts may

interfere with state court proceedings.[3] In my opinion, this case does not fall within the strictures of the Act.

This injunction is issued without any advance notice to any of the parties or to the state court, without any hearing, and without the benefit of briefs or oral argument. Further, I believe there is no legal justification for the injunction. Therefore, I respectfully dissent.

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[3] While not directly applicable here (because the state court has not interfered with federal rights or preempted federal law), the Supreme Court has issued this warning, "... a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear." Atlantic Coast Line Railroad, 398 U.S. at 294.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

James Emison, et al. **JUDGMENT IN A CIVIL CASE**

v.

Joan Growe, Secretary of State of the State of Minnesota, et al. Civil File No. 4-91-202

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

Judgment be entered enjoining proceedings in Cotlow v. Growe, No. C8-91-985, pending before the State of Minnesota Special Redistricting Panel, and any future orders that panel may issue relating to the adoption of any state redistricting plan or congressional redistricting plan are hereby stayed until further order of this court. Each of the parties and their counsel in the federal proceeding are hereby enjoined from attempting to enforce or implement any order of the above Minnesota Special Redistricting Panel which has proposed adoption of a reapportionment plan relating to state redistricting or congressional redistricting until further order of this court.

December 5, 1991 — Francis E. Dosel

Date — Clerk

/S/

(By) Deputy Clerk (Shirley J. Hanson)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

ORDER

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives;
and the Seventy-seventh
Minnesota State Senate,

Defendant
Intervenors,

and

Patrick O'Connor, Hennepin County
Auditor, individually and on behalf
of all County Auditors of the State
of Minnesota,

Defendant
Intervenor.

AND

Duane Benson, Terry Dempsey,
Delores Hettig, Richard Harmon,
David E. Peterson, E.M. Patricia
Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State
of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendant
Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

The scheduled hearing set for January 27, 1992, at which time the parties are to report on the final efforts of the legislative plan dealing with the state redistricting and congressional redistricting is hereby vacated; the hearing shall be held at 9:30 a.m. on February 4, 1992, on the fifth floor of the Federal Building, 316 North Robert Street, St. Paul, Minnesota, in courtroom number one.

Each of the parties is asked to respond to the following inquiry: In what specifics do you find: (a) the state redistricting plan, and (b) the congressional redistricting plan as proposed by the opposing party, to be unfair, including any alleged "gerrymandering" which you find to be inherent within each of the proposed plans.

Each party is to submit its response to the court's inquiry by January 10, 1992. Each party may file a reply to such response on or before January 17, 1992.

It is so ordered.

Dated: January 3, 1992.

By the Court:

/s/
Donald P. Lay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 10, 1992

Mr. Alan Weinblatt
1616 Pioneer Building
536 North Robert Street
St. Paul, MN 55101

Re: Patricia Cotlow, et al.
v. James Emison, et al.
No. 91-1084

Dear Mr. Weiblatt:

The Court today entered the following order in the above entitled case.

The motion of appellants to expedite consideration of the jurisdiction statement is granted. The order entered December 5, 1991, of the United States District Court for the District of Minnesota staying state court proceedings is vacated.

Very truly yours,
/s/
William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K. Suter
Clerk of the Court

Area Code 202
479-3011

January 27, 1992

Mr. Alan Weinblatt
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101

RE: Patricia Cotlow, et al. v. James Emison, et al. No. 91-1084

Dear Mr. Weinblatt:

The Court today entered the following order in the above-entitled case:

"The order of January 10, 1992, having vacated the order from which the appeal is taken, the appeal is dismissed as moot."

Very truly yours,

WILLIAM K. SUTER, Clerk

By

/s/ Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

gj
cc: John D. French
Bruce D. Willis
Eldon J. Spencer, Jr.
Michael A. Fahey
Clerk, U.S. District Court for the District of Minnesota
(Your No. 4-91-202)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of Minnesota; and Dale G. Folstad, Hennepin county Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

Civil File No. 4-91-202

ORDER

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant-Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmith,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of

the State of Minnesota,

Defendant-Intervenor.

IT IS HEREBY ORDERED that the hearing scheduled for Tuesday, February 4, 1992, is canceled.

Dated: January 31, 1992.

BY THE COURT:

/s/
Paul A. Magnuson
United States District
Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota

Civil File No. 4-91-202

ORDER

State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey,
Delores Hettig, Richard Harmon,
David E. Peterson, E.M. Patricia
Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State
of the State of Minnesota,

Defendant.

Court File No. 4-91-603

The motion filed on behalf of the intervening plaintiffs for reconsideration of stay and for other relief is hereby denied.

IT IS SO ORDERED.

DATED: February 11, 1992.

BY THE COURT

/s/
Donald P. Lay
United States Circuit Judge

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein and
Theodore Suss, individually and
and on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

vs.

Joan Growe, Secretary of
State of Minnesota; and
Dale G. Folstad, Hennepin County
Auditor, individually and on behalf
of all Minnesota county chief
election officers,

Defendants.

COMPLAINT

Plaintiffs, for their cause of action, state and allege as follows:

PARTIES

1. Plaintiffs are citizens and qualified voters of the United States of America and of the State of Minnesota residing in various

counties, legislative districts and congressional districts in the State of Minnesota, as appears with greater particularity in Exhibit "A" which is attached hereto and made a part hereof by reference.

2. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters of the United States of America who reside in the State of Minnesota and who are similarly situated as having been denied Equal Protection of the laws as further stated herein. This class is so numerous as to make joinder impossible and impractical; there are common questions of law and fact which predominate over individual questions of law and fact; the claims of the named individuals are typical of the claims of the members of this class; and these Plaintiffs will fully and adequately represent and protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of inconsistency or varying adjudications which would establish incompatible standards of conduct for the named Defendants. The common questions of law which predominate are (1) the constitutionality of the scheme of legislative apportionment set forth in Minnesota Statutes §§2.019 and 2.042 through 2.702 and (2) the constitutionality of the current plan of congressional redistricting set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), both of which are being enforced by the Defendants.

3. The Defendants are each citizens of the United States and of the State of Minnesota, residing in the State of Minnesota. Defendant Joan Growe is the duly elected, qualified and acting Secretary of State of Minnesota. On information and belief, she resides in Hennepin County, Minnesota. Under the provisions of Minnesota Statutes 1990 Chapters 200 through 211 inclusive, she is charged, in her official capacity, with the duty of keeping records of state elections, giving notice of state elections, receiving

the filings of candidates for state elective offices, preparing ballots and instructions to voters, distributing copies of the election laws of the State of Minnesota, receiving election returns, furnishing blank election ballots and forms to the several county auditors, furnishing certificates of election to successful legislative candidates in multi-county districts and to successful candidates for election to the United States Congress, serving on the State Canvassing Board, and various other election duties.

4. Defendant Dale G. Folstad, is the duly qualified and acting Auditor of Hennepin County, State of Minnesota. As such he is the Hennepin County Chief election officer.

5. This action is brought against Defendant Dale G. Folstad as Hennepin County Auditor, individually and as representative of all other county auditors and/or chief county election officers similarly situated in the State of Minnesota; such persons being so numerous as to make it impracticable to bring them all before the Court by way of joinder; there are predominantly common questions of law, to wit, the constitutionality under the United States and Minnesota constitutions of (a) the legislative apportionment system set forth in Minnesota Statutes §§2.019 and 2.042 through 2.702 and (b) the current plan of congressional redistricting as set forth by the Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); the defenses of the named Defendants will fairly and adequately protect the interests of the class; and the prosecutions of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Plaintiffs.

6. Said county auditors and chief county election officials, however designated or titled, are charged with various election duties in their respective counties, including but not limited to

preparation of ballots, furnishing of ballots, canvassing of returns of legislative and congressional elections; providing certificates of election to successful legislative and congressional candidates in single county legislative districts; certifying to the Secretary of State the results of the canvass in their respective counties and various other miscellaneous duties with respect to primary, general and special elections.

COUNT I

LEGISLATIVE MALAPPORTIONMENT

7. This case arises under the Fourteenth Amendment, Section 1 to the Constitution of the United States which provides in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. A state statute which effects a legislative apportionment which invidiously discriminates against voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provision.

This case also arises under the Fifth Amendment to the Constitution of the United States which provides in pertinent part:

> "No person shall . . . be deprived of life, liberty or property without due process of law."

Minnesota Statutes §§2.019 and 2.042 through 2.702 effect an apportionment which invidiously discriminates against voters in the

more highly populous districts including plaintiffs and prefers other voters in the least populous districts in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

8. This case also arises under Article IV, Section 2 of the Minnesota State Constitution which provides:

> "The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof."

9. Article IV, Section 3 of the Minnesota State Constitution provides:

> "The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state and also have the power at their first session after each enumeration of the inhabitants of this state made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion the new senators and representatives among the several districts according to the provisions of section Second this Article."

10. Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provisions of the Minnesota Constitution to have the entire membership of the Minnesota Legislature apportioned and elected on the basis of the 1990 Federal Census. The intent and the purpose of the aforesaid provisions of the Minnesota Constitution is to require that the members of the Legislature be elected by the people of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota State Senators and Representatives must be equally apportioned throughout the state in districts which

are arranged in proportion to the number of inhabitants therein.

. 11. On information and belief, the United States Census for the 1990 shows that the state legislative districts as established and set forth in Minn. Stat. 1990, §§2.019 and 2.042 through 2.702 are unequally apportioned; the legislature of the State of Minnesota has adopted no legislative apportionment system since 1983 when it legislatively adopted the apportionment of legislative districts set forth by the United States District Court for the District of Minnesota in the case of LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Minn. Stat. 2.019, Subd. 1); that despite the compilation of the 1990 census, the legislature has failed and neglected to reapportion the legislative districts in the State of Minnesota and will unless otherwise ordered, continue to fail and neglect to reapportion those districts; and the present apportionment of the state legislative districts is not based on any logical or reasonable formula whatsoever, but is arbitrary and capricious.

12. The unequal representation reflected in the statutes cited above, deprives Plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the United States Constitution including their rights of Due Process of Law and Equal Protection of the laws. It also deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.

13. The common relief sought against the defendants in their official capacities relates to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of senators and representatives of said State Legislature calling for elections therefor; and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of state representatives and senators to the Minnesota State Legislature.

14. The Legislature of the State of Minnesota will not pass a law reapportioning itself in conformity with the United States Constitution and the Constitution of the State of Minnesota which law will be signed by the governor of the State of Minnesota, during the 1991 Legislative Session. The Plaintiffs allege on information and belief that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct the election for the next legislature, namely the 1993 legislature, during the year 1992, on the basis of the senatorial and representative districts set forth in Minn. Stat. §§2.019 and 2.042 through 2.702, and that until there is legislative reapportionment, Defendants will continue to do so in subsequent elections of members of the Minnesota state legislature.

15. Plaintiffs further allege that they intend to and will vote in the state primary and general elections in 1992 and thereafter for candidates for state legislative offices; and that said elections conducted in accordance with Minn. Stat. §§2.019 and 2.042 through 2.702 will continue to deprive Plaintiffs of their rights guaranteed under the Constitution of the United States and the Constitution of the State of Minnesota.

16. In the absence of reapportionment of the legislative districts of the State of Minnesota in conformity with the Minnesota Constitution, any action of these Defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts prescribed by Minn. Stat. §§2.019 and 2.042 through 2.702, has deprived and will continue to deprive Plaintiffs of their constitutional rights in that:

(a) They are and will be arbitrarily deprived of liberty and property without Due Process of law, and are and will be arbitrarily deprived of the Equal Protection of the laws in violation of the Fourteenth Amendment to the Constitu-

tion of the United States.

(b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.

(c) They are and will be to substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.

(d) They are and will be deprived of an equally apportioned state legislature as guaranteed by Article 4, Sections 2 and 3 of the Minnesota Constitution.

(e) Their right to vote, as guaranteed by Article 7, Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.

17. By reason of the failure of the Legislature and Governor of the State of Minnesota to reapportion the legislative districts of the state in conformity with the Minnesota Constitution, thus violating the constitutional rights of these Plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

COUNT II

CONGRESSIONAL REDISTRICTING

18. Plaintiffs reallege Paragraphs 1 through 6 hereof.

19. This case arises under the Fourteenth Amendment, Section 1 of the Constitution of the United States which provided in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. State action which enforces or effects or a congressional apportionment which invidiously discriminates against voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provision.

20. Article IV, Section 3 of the Minnesota State Constitution provides:

> At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts.

21. Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provision of the Minnesota Constitution to have all Representatives in Congress from the State of Minnesota apportioned and elected on the basis of the 1990 Federal Census. The intent and purpose of the aforesaid provision of the Minnesota Constitution is to require that Representatives in Congress be elected by the people of the State of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota Representatives in Congress from the State of Minnesota must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.

22. On information and belief, the United States Census for 1990 shows that the congressional districts as established by the Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) are now unequally apportioned; that despite the compilation of said

Census, the Legislature has failed and neglected to reapportion lawfully the congressional districts in the State of Minnesota; and the present apportionment of the congressional districts is not based upon any logical or reasonable formula whatsoever, but is arbitrary and capricious. The estimated present population of each congressional district as now set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), appear more fully in Exhibit "B" which is attached hereto and made a part hereof by reference.

23. The unequal representation reflected in Exhibit "B" deprives plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States including their rights of Due Process of Law and the Equal Protection of the laws. It further deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.

24. The common relief sought against all defendants in their official capacities related to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of Representatives in Congress calling for elections therefor; the appointment of election judges therefor; the registration of qualified voters therefor; the holding of elections therefor; the certifying of the result of said elections; the preparation of ballots therefor, and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of Representatives in Congress.

25. The plaintiffs are informed and believe and, therefore, allege that the Legislature of the State of Minnesota will not pass a law reapportioning the congressional districts in conformity with the United States Constitution and the Constitution of the State of Minnesota during the 1991 Legislative Session. The plaintiffs further allege on information and belief that all of the defendants

intend to and will, unless sooner restrained by an order of this Court, conduct the next election for Representatives in Congress during the year 1992, on the basis of the current congressional districts and that until there is congressional reapportionment, defendants will continue to do so in subsequent elections of Representatives in Congress.

Plaintiffs further alleges that they intend to and will vote in the state primary and general election in 1992 and thereafter for candidates for Representatives in Congress; and that said elections conducted in accordance with the present districts will continue to deprive plaintiffs and the class that they represent of their rights guaranteed under the Constitution of the United States and of the State of Minnesota.

26. In the absence of reapportionment of the congressional districts of the State of Minnesota in conformity with the United States Constitution and the Minnesota Constitution, any action of these defendants in conducting an election for Representatives in Congress in accordance with the present districts has deprived and will continue to deprive plaintiffs of their constitutional rights in that:

(a) They are and will be arbitrarily deprived of liberty and property without due process of law, and are and will be arbitrarily deprived of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

(b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.

(c) They are and will be in substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.

(d) They are and will be deprived of equally apportioned

congressional districts as guaranteed by Article 4, Section 3 of the Minnesota Constitution.

(e) Their right to vote, as guaranteed by Article 7, Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.

27. By reason of the failure of the Legislature of the State of Minnesota to reapportion the congressional districts of the state in conformity with the Federal and Minnesota Constitutions, thus violating the constitutional rights of these plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

JURISDICTION

28. This Court has authority under and by virtue of 42 U.S.C. § 1983 et. seq. to enforce the Plaintiffs' United States Constitutional rights set forth above and has general jurisdiction to enforce the Plaintiffs' Minnesota constitutional rights set forth in Counts I and II above.

29. This Court also has jurisdiction under the provisions of M.S.A. §555.01 and §555.08 through 555.12 to grant the relief requested herein.

WHEREFORE, plaintiffs pray for relief as follows:

1. That this Court declare the rights of the plaintiffs and the class they represent in the premises, to wit:

   (a) that the present legislative apportionment of the State of Minnesota as set forth in Minnesota Statutes § 2.019 and 2.042-2.702 has deprived and continues to deprive plaintiffs and their class of their liberty and property without Due Process of law and has denied and continues to deny the plaintiffs Equal Protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States; and

   (b) the present scheme of congressional apportionment deprives plaintiffs and the class they represent of Due Process of Law and Equal Protection of the law all in violation of the Fourteenth Amendment to the Constitution of the United States.

2. The Court declare that Minnesota Statute §§2.042 through 2.072 unlawfully impairs the rights of the plaintiffs and the class they represent as guaranteed by Article 1, Section 2 and Article 4, Sections 2 and 3 of the Minnesota Constitution.
3. The Court issue its permanent injunction and judgment decreeing that the plan of legislative apportionment set forth in Minnesota Statute § 2.019 and 2.042 through 2.702 may not hereafter be used as a valid plan and scheme of legislative apportionment.
4. The Court permanently restrain the defendants and the class of persons they represent from receiving nominations and petitions for legislative office, from issuing certificates of nominations and elections, and from all further acts necessary to the holding of elections for members of the Minnesota Legislature in the districts set out and described in Minnesota Statutes §§2.042 through 2.702 until such time as the legislature passes and the governor approves legislation reapportioning the state legislative districts in accordance with the Constitution of Minnesota and the Due Process and Equal Protection clauses of the United States Constitution.
5. The Court notify the Legislature of the State of Minnesota presently in session, that it shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new legislative apportion-

ment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new legislative apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of legislative apportionment by said Legislature that this Court will make a determination of a proper legislative apportionment system for the State of Minnesota.

6. The Court declare that the present plan of Congressional districts unlawfully impairs the rights of the plaintiffs and the class they represent as guaranteed by Article 4, Section 3 and Article 1, Section 2 of the Minnesota Constitution.
7. The Court issue its permanent injunction and judgment decreeing that the plan of congressional apportionment set forth in the present plan of Congressional districts as set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) may not hereafter be used by Defendants as a valid plan and scheme of congressional apportionment.
8. The Court permanently restrain the Defendants and the class of persons they represent from receiving nominations and petitions for Congressional office, from issuing certificates of nomination and election and from all further acts necessary to the holding of elections for members of Congress in the districts set out and described in Appendix A to the decree of the Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) until such time as the legislature passes and the governor approves legislation apportioning the eight (8) Minnesota Congressional districts in accordance with the Constitution of Minnesota and the Due Process and Equal Protection clauses of the United States Constitution.

9. The Court notify the Legislature of the State of Minnesota presently in session, that it Court shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new congressional apportionment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new congressional apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of congressional apportionment by said Legislature that this Court will make a determination of a proper congressional apportionment system for the State of Minnesota.
10. The Court order defendants to pay to plaintiffs, pursuant to 42 U.S.C. §1988 and Minn. Stat. § 555.08, their reasonable attorneys fees and expenses, expert fees, costs and other expenses incurred in prosecuting this action.
11. For such other and future relief as is just in the circumstances.

Dated: January 24, 1991

/s/

Alan W. Weinblatt
Weinblatt and Davis
Attorney for Plaintiffs
1616 Pioneer Building
St. Paul, MN 55101

Telephone: (612) 292-8770
Atty. Regis. No. 115332

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs. disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.21, subd. 2, to the party against whom the allegations in this pleading are asserted.

/s/
ALAN W. WEINBLATT

EXHIBIT A

Plaintiff	Legislative District	Congressional District	County
Patricia Cotlow	48A	6	Hennepin
Phillip Krass	42A	3	Hennepin
Sharon LaComb	37A	3	Dakota
Theodore Suss	36A	3	Scott
James Stein	38B	4	Dakota

EXHIBIT B

	1980 Population	1990 Population	Net Change	% Change
State	4,075,970	4,362,938	+286,968	+ 7.0%
District				
1	509,460	528,955	+ 19,495	+ 3.8%
2	509,500	478,744	- 30,756	- 6.0%
3	509,499	663,100	+153,601	+30.1%
4	509,499	534,974	+ 25,475	+ 5.0%
5	509,506	499,270	- 10,236	- 2.0%
6	509,505	652,674	+143,169	+28.1%
7	509,495	515,681	+ 6,186	+ 1.2%
8	509,506	489,540	- 19,966	- 3.9%

STATE OF MINNESOTA
DISTRICT COURT

COUNTY OF HENNEPIN
FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein and
Theodore Suss, individually
and on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

vs.

Joan Growe, Secretary of
State of Minnesota; and
Dale G. Folstad, Hennepin County
Auditor, individually and on behalf
of all Minnesota county chief
election officers,

Defendants.

Court File No.
MX 91-001562

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto through their respective undersigned attorneys as follows:

1. Pursuant to Minn. Stat. §§ 484.01, *et seq.* (1990). this Court has Jurisdiction of the subject matter of all of the allegations contained in the Complaint filed herein.

2. This Court has jurisdiction to hear and determine cases arising under 42 U.S.C. § 1983.

3. Plaintiffs herein possess the requisite standing and Defendants are the appropriate parties.

4. The action may be maintained as a class action, it being stipulated that the class is so numerous that joinder of all members is impracticable. there are questions of law common to the class, the claims of the named plaintiffs are typical of the claims of the class, the named plaintiffs will fairly and adequately protect the interests of the class, the prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications, the common questions of law predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The class consists of Minnesota voters the effectiveness of whose votes has become diluted as a result of population increases in the legislative and/or congressional districts in which they reside. These population increases are reflected in the 1990 Federal Census.

5. The present apportionment of legislative districts set forth in Minn. Stat. §§ 2.019 and 2.042 through 2.702 contravene the provisions of the United States Constitution, Amendment 14, Section 1, and the Minnesota Constitution. Article 4, Section 2 and Article 4, Section 3. as a result of changes in the population of the legislative districts reflected in the 1990 Federal Census.

6. The plan of legislative apportionment contained in Minn. Stat. §§ 2.019 and 2.042 through 2.702 shall not be used by the Defendants for legislative elections to be held in November, 1992, or for any other purpose except for special legislative elections required to be held by law, unless otherwise ordered by this court.

7. The current plan of congressional redistricting as set forth

in Appendix A to *LaComb v. Growe*, 541 F. Supp. 145 (D. Minn. 1982) contravenes the provisions of the United States Constitution, Amendment 14, Section 1, and the Minnesota Constitution, Article 4, Section 2, and Article 4, Section 3, as a result of changes in the population of the congressional districts reflected in the 1990 Federal Census.

8. The plan of congressional redistricting contained in Appendix A to the court's order in *LaComb v. Growe*, 541 F. Supp. 145 (D. Minn. 1982) shall not be used by Defendants for congressional elections to be held in November, 1992, or for any other purpose except for special congressional elections required to be held by law, unless otherwise ordered by this Court.

9. The Chief Judge of Hennepin County District Court may request the Chief Justice of the State of Minnesota to exercise the Supreme Court's inherent authority to appoint a panel of three district and/or appellate judges to hear and decide the within action and all motions and proceedings arising therefrom.

10. A three judge panel appointed by the Chief Justice of the State of Minnesota or a single judge of the District Court of Hennepin County, Minnesota, may enter an Order incorporating the terms of paragraphs 5 and 7 of this Stipulation.

WEINBLATT AND DAVIS

/s/

ALAN W. WEINBLATT
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(612) 292-8770

Attorneys for Plaintiffs

Dated: February 25, 1991

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

By: /s/
JOHN R. TUNHEIM
Chief Deputy
Attorney General
Atty. Ret. No. 122580

102 State Capitol
St. Paul, MN 55155
(612) 296-2351

Attorneys for Defendnants Joan Growe and State of Minnesota
Dated: February 22, 1991

/s/
MICHAEL O. FREEMAN
Hennepin County Attorney
Atty. Reg. No. 31860

A-2000 Hennepin County
Goverment Center
300 South Sixth Street
Minneapolis, MN 55487
(612) 348-3099

Attorney for Defendants Dale Folstad and Hennepin County
Dated: February 22, 1991

STATE OF MINNESOTA
IN SUPREME COURT

C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Plaintiffs,

vs.

Joan Growe, Secretary of State of Minnesota; and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants

ORDER

WHEREAS, pending in the Hennepin County District Court is the action commenced by Patricia Cotlow, et al. (Case No. MX 91-001562) challenging the apportionment of state legislative and congressional districts and

WHEREAS, this court has been requested informally to appoint a panel of three judges to hear and decide the matter on its merits, as well as any and all motions or other proceedings arising in connection therewith;

IT IS HEREBY ORDERED that the Honorable Harriet Lansing, Judge of the Court of Appeals; the Honorable

William E. Walker, Judge of the Seventh Judicial District; and the Honorable Kenneth J. Maas, Jr., Judge of the Tenth Judicial District are appointed to hear and decide all matters, including all pretrial and trial motions, in connection with the panels' ultimate disposition of the above-entitled action. See Minn. Stat. § 2.724, subd. 1 (1990).

Dated: June 4, 1991

BY THE COURT:

/s/
Chief Justice

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

MX 91-001562

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

PRETRIAL ORDER NO. 1

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Applicants for Intervention,

vs.

Joan Growe, Secretary of State
of Minnesota; and Dale G. Fostad,
Hennepin County Auditor,
individually and on behalf of
all Minnesota county chief
election officers,

Defendants,

and

The Seventy-seventh Minnesota

State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The above-entitled matter was called for pretrial conference pursuant to Minn. R. Civ. P. 16.01 before the Honorable Harriet Lansing, Honorable William E. Walker, and Honorable Kenneth J. Maas, Jr., on July 26, 1991.

Plaintiffs appeared by Alan Weinblatt, Weinblatt & Davis, 336 Robert Street, Suite 1616, St. Paul, Minnesota, 55101.

Defendant Dale G. Folstad appeared by Hennepin County Attorney Michael Freeman, A-2000 Hennepin County Government Center, 300 South Sixth Street, Minneapolis, Minnesota, 55487.

Defendant Joan Growe appeared by Chief Deputy Attorney General John R. Tunheim, Office of the Attorney General, 102 State Capitol, St. Paul, Minnesota, 55155.

Defendant-Intervenors appeared by John D. French, Faegre & Benson, 2300 Norwest Center, Minneapolis, Minnesota, 55402.

Plaintiff-Intervenors appeared by Bruce D. Willis, Popham, Haik, Schnobrich, Kaufman, Ltd., 3300 Piper Jaffray Tower, 222 Ninth Street South, Minneapolis, Minnesota, 55402.

All parties addressed the Court regarding intervention and stipulated to intervention by Walker, Miller, Sudor, and Vangh as Plaintiff-Intervenors. Plaintiffs agreed to withdraw their objection to intervention, and Plaintiff-Intervenors agreed not to seek to remove this action to federal court.

The parties acknowledged this Court's subject matter jurisdiction, and this Court concludes that it has jurisdiction over the subject matter of this action. See Minn. Const. art. I, §§ 2, 3;

Scott v. Germano, 381 U.S. 407, 410, 85 S. Ct. 1525, 1527 (1965)(recognizing state judiciary's authority to require valid reapportionment and to formulate redistricting plan).

Each party proposed a schedule to the Court. In view of the important state interests implicated in this proceeding, this Court must proceed as expeditiously as possible to resolve the parties' respective claims. Accordingly, based upon the parties' stipulation, the entire file, and arguments of counsel, and in conformance with the June 4, 1991 order of the Minnesota Supreme Court, this Court orders:

1. Pursuant to Rule 24 of the Minnesota Rules of Civil Procedure and the stipulation of the parties, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh are permitted to intervene in this action as Plaintiff-Intervenors.

2. Proposals regarding the criteria to be used in formulating an appropriate redistricting plan shall be submitted by the Defendant-Intervenors to this Court by Friday, August 9, 1991. Counsel for the Defendant-Intervenors has offered to provide this Court with documentation criteria adopted by the Defendant-Intervenors in formulating the redistricting plan that is the subject of litigation pending in Ramsey County entitled The Seventy-seventh Minnesota State Senate and the Seventy-seventh Minnesota State House of Representatives v. Arne Carlson, et al, Court File No. C3-91-7547, and we request that these materials also be submitted by August 9, 1991. Any responses to the criteria submitted must be filed with this Court by Tuesday, August 13, 1991.

Assuming conformity by the parties with this order, this Court will issue an order by Friday, August 16, 1991, specifying the criteria to be used in formulating proposed redistricting plans.

Proposed redistricting plans shall be submitted by Friday, August 30, 1991.

3. To assess the capability of the Minnesota State Legislature's redistricting facilities and the feasibility of using its system to devise an appropriate redistricting plan, this Court shall tour the legislature's redistricting computer center. We request that counsel for Defendant-Intervenors arrange this tour for the afternoon of Tuesday, August 20, 1991.

4. A copy of this order shall be published.

Dated: July 29, 1991

BY THE COURT:

Honorable Harriet Lansing

Honorable Kenneth J. Maas, Jr.

Honorable William E. Walker

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

MX 91-001562

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Applicants for Intervention,

vs.

Joan Growe, Secretary of State
of Minnesota; and Dale G. Folstad,
Hennepin County Auditor,
individually and on behalf of
all Minnesota county chief
election officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives

PRETRIAL ORDER NO. 2

Establishing Preliminary Criteria for Legislative Congressional Redistricting, Directing Oral Argument on Reserved Issues, and Setting Comprehensive Timetable

and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

In Pretrial Order Number One, the parties were required to submit proposals for criteria to be used in formulating an appropriate congressional and legislative redistricting plan for the State of Minnesota. After issuance of that order the Ramsey County District Court, in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991) determined that Chapter 246, S.F. No. 1571, passed by the legislature May 18, 1991, changing the boundaries of Minnesota legislative districts, was not effectively vetoed and became a validly enacted law of the State of Minnesota. In light of this decision, and the governor's subsequent announcement that the order would not be appealed, the panel has revised the proposed time schedule to provide an opportunity for motions or amendments relating to the validity of the current legislative redistricting and for oral argument on reserved criteria issues.

The preliminary criteria, based on the submission of the parties in conformance with Pretrial Order No. One shall be as follows:

Congressional

1. There will be eight districts, each entitled to elect a single member.

2. The districts will be as nearly equal in population as practicable. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See

Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751 (1975); Connor v. Finch, 431 U.S. 407, 97 S. Ct. 1828 (1977).

3. The districts will be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

4. The districts will be numbered in a regular series, beginning with congressional district one in the southeast corner of the state and ending with district eight in the northeast corner of the state.

5. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

6. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

7. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F.

Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

Legislative

1 The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

2. Each district is entitled to elect a single member.

3. A representative district may not be divided in the formation of a senate district.

4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Chapman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.

5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

6. The districts must be numbered in a regular series, beginning with House district 1a in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

Reserved Issues

1. Whether a provision prohibiting use of election data or voting patterns should be added to the standards.

2. Whether a provision allowing preservation of "prior

cores" should be added to the standards.

3. Whether a provision forbidding use of information on incumbents should be added to the standards.

4. Additional considerations in recognizing or rejecting communities of interest.

Timetable

Aug. 20, 1991 1:30	Tour of computer systems being used by the legislature for developing redistricting plans.
Aug. 27, 1991	Submission of any written materials relating to reserved issues in Preliminary Criteria Order.
Aug. 29, 1991 1:30	Oral argument on reserved issues in Preliminary Criteria Order, status briefing or argument on any motions or amendments as a result of decision in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991). Stipulation of parties on population figures and base maps to be used in redistricting plan. Absent stipulation, oral argument.
Sept. 13, 1991	Issuance of Final Criteria Order and specification of form for submitting data.
Oct. 7, 1991	Submission of proposed redistricting plans together with written justification and graphs or maps required by Final Criteria Order.
Oct. 18, 1991	Submission of parties' written reaction to each other's plans.
Nov. 20, 1991	Distribution of panel's Redistricting Plan.

Nov. 30, 1991	Submission of parties' written responses to plan.
Dec. 7, 1991	Oral argument on plan.
Dec. 20, 1991	Issuance of final decision.

Dated: August 16, 1991 BY THE COURT:

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

Memorandum

The panel has considered and in large part adopted the standards unanimously passed by the Minnesota House and Senate. Because the Minnesota Constitution places primary responsibility for redistricting with the legislature, these standards have been accepted as preferred redistricting policy to the extent the standards apply to the panel's task and are not inconsistent with state or federal constitutional principles, state law or other recognized state policy. Several standards have been augmented or restated to incorporate applicable case law or appropriate suggestions by the parties. Standards reserved for oral argument have been submitted by separate parties, but not all parties have had an opportunity to respond. Because the timetable has been amended to permit response to the Ramsey County District Court's declaration that Chapter 246 is a validly enacted law of the State of Minnesota, the timetable can also permit oral argument on issues relating to the use of election data, prior cores, incumbency information and communities of interest.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

PRETRIAL ORDER
NO. 3
Establishing Final Criteria for Redistricting, Staying the Time Periods for Local Governmental Units to Redefine Their Local Election Districts, Accelerating Time Schedule for Completing the Legislative Redistricting Plan, Designating Form for Submission of Plans, Granting Motions to Amend Defendant-Intervenors Complaint, and designating Issues for Oral Argument on September 24, 1991

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

I.

Criteria

Pretrial Order No. 2 established preliminary criteria for redistricting, but reserved four issues for further argument by the parties. The parties submitted memoranda and addressed the reserved issues in oral argument on August 29, 1991. Based on the written and oral submissions, the panel orders the following:

Congressional

1. The preliminary congressional criteria in paragraphs 1 through 7 of Pretrial Order No. 2 are adopted as final criteria.

2. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

Legislative

3. The preliminary legislative criteria in paragraphs 1 through 9 of Pretrial Order No. 2 are adopted as final criteria.

4. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

II.

5. An additional criterion proposed by plaintiffs and defendant-intervenors, requesting that any plan for redrawing state legislative districts be based on Minnesota Laws 1991, Chapter 246 and necessary changes, is consolidated for consideration with

motions to be argued on September 24, 1991.

III.

Motion to Stay Time Period for Local Governments to Redefine Their Local Election Districts

6. The Hennepin County Auditor, on behalf of all chief election officials, requests an order to stay the time periods for local governments to redefine their local election districts. Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 require local governmental units to redefine their local election districts within specific time periods following final redistricting.

These time periods were previously stayed on July 24, 1991 by order of the Ramsey County District Court. Judge Smith's determination in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991) that Senate File No. 1571 (Chapter 246) and House File No. 635 (Chapter 349) were validly enacted into law implicitly requires the local governmental units to begin redistricting. The Hennepin County Auditor asserts that corrections affecting 17 counties, 44 cities and 17 towns must be made before local redistricting is possible. These corrections cannot be made by the legislature before it reconvenes in January.

The panel orders that the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 as amended by Minnesota Laws 1991, Chapter 349, are suspended until further order of this court.

IV.

Time Schedule

7. A majority of the parties to this action have requested that the panel accelerate the date for completion of the legislative

redistricting process to allow for orderly planning by local officials and candidates and proper notice to voters.

The panel recognizes the validity of these concerns and orders the following changes to the time schedule:

September 24, 1991 1:30 - Courtroom 200 Minnesota Judicial Building	Oral argument on issues designated in section VII.
October 7, 1991	Submission of proposed legislative redistricting plan.
October 16, 1991 1:30 - Courtroom 200 Minnesota Judicial Building	Submission of parties'written reaction to each other's plans and oral arguments contrasting, comparing and analyzing the plans.
November 20, 1991	Distribution of panel's legislative redistricting plan.
November 27, 1991	Submission of parties' written responses to legislative redistricting plan.
December 3, 1991	Oral arguments on redistricting plan.

The revised schedule will permit the panel to have a target date for completion of the legislative redistricting plan in the first week in December.

V.

Population Figures and Forms for Submission

8. The parties have agreed that the following population figures and base maps be used for purposes of the redistricting plan:

Census of Population and Housing, 1990: Public Law (P.L.) 94-171 (Minnesota) [machine-readable data files]/prepared by the Bureau of Census.

TIGER/Line Census Files, 1990 [machine-readable data files]/prepared by the Bureau of Census.

9. The legislative redistricting plans to be submitted on October 7, 1991 shall include the following:

a. a map of the state showing proposed districts and minor civil division boundaries in counties that are split between districts;

b. a map of the seven-county metropolitan area showing proposed districts, minor civil division boundaries, and census tract boundaries;

c. a map of the cities of St. Paul and Minneapolis showing city boundaries, street names, and census tract boundaries and, where census tracts are split, block boundaries;

d. a map of each municipality not wholly within one district or containing more than one whole district, showing census tract or enumeration district, block groups and block boundaries, where available;

e. a table showing the name or number designation and population of all proposed districts; the numerical and percentage deviation from the ideal district size of each district, the average deviation for all districts, and the total deviation for the state;

f. a table showing each county, minor civil division, and census tract that will lie in more than one proposed legislative district and including the population of each subunit so divided;

g. an additional table showing and report explaining how the parts of any divided unit add up to equal the populations of other complete districts and explaining discrepancies, if any, and a final addition of all district populations to a state total;

h. a table divided by legislative house ranking each district by percentage deviation and showing the district number, its population, and its population or numerical deviation;

i. a calculation of the population required to elect a majority of each legislative body;

j. a calculation of the ratio between the highest and lowest population district; and

k. a calculation of the mean deviation of all districts.

VI.

Pending Motions

Defendant-Intervenors' Motion to Amend

10. The Minnesota Legislature has moved to supplement and amend its answer by adding a claim for declaratory judgment. The counterclaim seeks a declaration that any court-ordered state legislative redistricting plan must make only those changes to Minnesota Laws 1991, Chapter 246 which are (1) necessary to correct constitutional or Voting Rights Act defects, (2) which respect the integrity of that law, and (3) which are consistent with the legislative history.

The counterclaim relates to events which have occurred since the date of the party's original pleading. Although significant issues have been raised relating to the propriety of granting a declaratory judgment, amendment is ordinarily freely granted,

unless doing so would result in undue prejudice to the adverse party. See Wilson v. City of Eagan, 297 N.W.2d 146, 151 (Minn. 1980).

Neither the plaintiffs nor the plaintiff-intervenors would be significantly prejudiced by our allowing the requested amendment at this time. Accordingly, permission to amend to add a counter-claim for declaratory judgment is granted. However, we caution that, by granting the defendants' motion, we express no opinion on the merits of the claim.

Plaintiff's Motions

11. Plaintiffs Cotlow, Krass, LaComb, Stein, and Suss have requested that the panel rule on whether Minnesota Laws 1991, Chapter 246 meets the requirements of the Federal Voting Rights Act, 42 U.S.C. §1973 (1988). Specifically, plaintiffs move the court to (a) affirm Minnesota Laws 1991, Chapter 246 as recommended for correction by the August 26, 1991 action of the Minnesota House of Representatives and Minnesota Senate Committees on Redistricting as the sole and exclusive plan of legislative redistricting for use by the State of Minnesota. In the alternative, the plaintiffs move the court to (b) adopt Chapter 246 and its corrections and any modifications required by the Voting Rights Act or the Minnesota and U.S. Constitutions, or to (c) adopt Minnesota Laws 1991, Chapter 246 as recommended for correction as the court's plan.

These motions and related issues are set for oral argument on September 24, 1991 at 1:30 in Courtroom 200 of the Minnesota Judicial Building.

Plaintiff-Intervenors' Motion

12. On September 11, 1991, plaintiff-intervenors moved to stay the state court redistricting proceedings.

VII.

September 24, 1991 Oral Argument

13. At the oral argument on September 24, 1991, the parties are asked to address the following issues:

a. Whether Minnesota Laws 1991, Chapter 246 violates the Minnesota or U.S. Constitutions or the Federal Voting Rights Act.
b. The pending motions described in Section VI.
c. The panel's proposed schedule and the concept of a plan with a delayed effective date.

VIII.

Miscellaneous

14. The caption is amended to substitute the name of the present Hennepin County Auditor, Patrick H. O'Connor, for the former Hennepin County Auditor, Dale G. Folstad.

15. Peter S. Wattson, Senate Counsel, Minnesota State Senate is added as attorney of record for the Minnesota State Senate, in association with John D. French and Michael Cheever in this proceeding.

Dated: September 13, 1991 BY THE COURT:

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

Memorandum

In staying the time period for local governmental units to redefine their local election districts and in accelerating the schedule to complete a legislative redistricting plan, the panel is responding to two valid concerns. First, local officials must have adequate time to redraw ward and precinct boundaries, establish

precinct polling locations, prepare for elections, and inform voters of all changes. Potential candidates must have adequate time to determine who their constituents will be and to establish residency. Voters must have adequate time to learn about the candidates and their positions. These interests require the court to act swiftly in resolving any disputes relating to a final redistricting plan. Second, we recognize that the Minnesota Constitution places the power and the responsibility of redistricting with the state legislature and governor. They cannot act until January, 1992.

To balance the need for expediency with the appropriate deference to the legislative function, the panel is now considering, if no pending motions are dispositive, a delayed effective date of the legislative redistricting plan. This procedure would permit the legislature and governor the maximum opportunity to act and would also provide adequate notice to all concerned persons of the alternative in the event the legislature and governor cannot agree upon a constitutional plan. All persons would have sufficient time to thoroughly analyze the plan, so that any review of it could be expedited. This procedure would eliminate any concern about the timeliness of the state court proceeding and allow for orderly expedition of any appeal. These accommodations would permit important state issues to be determined within the state courts and prevent a duplication of time and effort in other forums.

The time requirements for fashioning a congressional redistricting plan are not so immediate. In considering the schedule for congressional redistricting, the panel, because of the reduced time pressure, is not required to act until the legislature has had an opportunity to complete a congressional redistricting plan.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

PRETRIAL ORDER NO. 4

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota

State Senate,

Defendant-Intervenors.

At oral argument on September 24, 1991, the parties addressed the issues designated in Pretrial Order No. 3: (1) whether Minnesota Laws 1991, Chapter 246 violates the Minnesota or U.S. Constitutions or the Federal Voting Rights Act; (2) plaintiff-intervenors' motion to stay these proceedings and, if denied, to certify the issue to the Minnesota Supreme Court as important and doubtful or otherwise provide for direct appeal; (3) plaintiffs and defendant-intervenors' motion to adopt Minnesota Laws 1991, Chapter 246 and proposed legislative amendments as the redistrict- ing plan; and (4) defendant-intervenors' motion to add a criterion that any court-adopted plan for redrawing state legislative districts be based on Minnesota Laws 1991, Chapter 246 and limited to changes necessary to correct defects.

Based on the arguments, the memoranda submitted, and the prior proceedings, the court concludes and orders as follows:

I.

Constitutionality of
Minnesota Laws 1991, Chapter 246

Article IV, section 2 of the Minnesota Constitution requires that representation in both the senate and house of representatives be "apportioned equally throughout the different sections of the state in proportion to the population thereof." Section 3 requires senators to be chosen "by single districts of convenient contiguous territory," with no representative district divided in the formation of a senate district.

All parties acknowledge that Minnesota Laws 1991,

Chapter 246 violates the constitutional commands of equal apportionment and contiguity. The parties disagree on whether the violations are technical or more deeply rooted. We conclude that numerous infirmities, including noncontiguous districts, invalidate Minnesota's present districting law, Minnesota Laws 1991, Chapter 246, under the Minnesota Constitution, Article IV, sections 2 and 3, and that further reapportionment is required to protect the rights of voters in this state.

We also conclude that Minnesota Laws 1991, Chapter 246 is invalid under the United States Constitution. The districting of Wayzata, Chatham Township, and New Hope, among others, violates the equality of representation requirement imposed by the fourteenth amendment to the United States Constitution. See Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362 (1964).

Plaintiff-intervenors have requested additional time to submit specific instances of violations of the Federal Voting Rights Act. This request was granted orally at the September 24 hearing.

II.

Motion to Stay

Plaintiff-intervenors move this court to stay its proceedings until completion of the proceedings of the United States District Court in Emison v. Growe, File No. 4-91-202 (D. Minn.). All other parties oppose this motion. Because of the length of the requested stay, the motion is essentially for dismissal. Plaintiff-intervenors have failed to demonstrate why the state should abdicate its responsibility to redistrict.

This court has a duty to hear and determine cases properly before it. This action, filed January 24, 1991, was pending when Emison v. Growe was filed. The interests represented in these two proceedings are similar but are not necessarily the same. The Hennepin County Auditor has not been permitted to intervene in

the federal suit and thus was unable to request the temporary stay of the local governments' time-restricted statutory obligation to redefine election districts, relief that this court granted in Pretrial Order No. 3. Plaintiff-intervenors have argued that violations of the Federal Voting Rights Act require federal jurisdiction, but acknowledge that their federal action does not include a claim that Chapter 246 violates that act.

The integrity of elections and the integrity of legislative apportionment are vital to this state's governance. The strong state interest in guaranteeing rights of political participation require maintaining control over reapportionment, a matter of particularly local concern. A state's judiciary, as well as its legislature, is charged with taking an active part in preserving these interests. See Scott v. Germano, 381 U.S. 407, 409, 85 S. Ct. 1525, 1527 (1965) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged."); People v. Kerner, 32 Ill.2d 539, 546-49, 208 N.E.2d 561, 566-67 (1965); Kruidenier v. McCulloch, 257 Iowa 1315, 1318-19, 136 N.W.2d 546, 548 (Iowa 1965).

In addition, the Minnesota Constitution, while delegating the primary responsibility for reapportionment to the legislature, imposes various restrictions on redistricting plans, and it is the duty of state courts to ensure adherence to these constitutional mandates. See generally Minnesota State Bd. of Health v. City of Brainerd, 308 Minn. 24, 40 n. 5, 241 N.W.2d 624, 633 n. 5 (1976).

. Judicial economy and the potential duplication of proceedings are important considerations. However, our review of the cases persuades us that when state court proceedings over reapportionment have begun, those proceedings are rarely stayed and it is

the federal courts that traditionally abstain. See Scott, 381 U.S. 407, 85 S. Ct. 1525; Badham v. United States Dist. Court, 721 F.2d 1170 (9th Cir. 1983); Grivetti v. Illinois State Electoral Bd., 335 F. Supp. 779 (N.D. Ill. 1971); Mahoney v. Burkhardt, 299 F. Supp. 787 (D. N.J. 1969); Ince v. Rockefeller, 290 F. Supp. 878 (S.D. N.Y. 1968); Silver v. Jordan, 274 F. Supp. 882 (C.D. Cal. 1967); Kerner, 32 Ill.2d 539, 208 N.E.2d 561; Kruidenier, 136 N.W.2d 546; see also Bianchi v. Griffing, 393 F.2d 457 (2d Cir. 1968) (challenging county reapportionment); Board of County Comm'rs v. Hayden, 715 F. Supp. 313 (D. Kan. 1989) (challenging state census); Henson v. Atchley, 453 F. Supp. 555 (E.D. Tenn. 1978). But see Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441 (1964) (abstention not warranted when state law is unambiguous and no similar state court proceeding was pending); Ryan v. State Bd. of Elections, 661 F.2d 1130 (7th Cir. 1981) (abstention not warranted when no issues of state law are involved); Farnum v. Burns, 561 F. Supp. 83 (D. R.I. 1983) (no pending state action or ambiguous state law); Cummings v. Meskill, 341 F. Supp. 139 (D. Conn. 1972), rev. on other grounds 412 U.S. 735, 93 S. Ct. 2321 (1973); see also Licht v. Quattrocchi, 454 A.2d 1210 (R.I. 1982) (based on same facts as Farnum).

Plaintiff-intervenors have also moved to stay this proceeding to allow the legislature and governor opportunity to revise Minnesota Laws 1991, Chapter 246. There is no doubt that the legislature has the primary duty to apportion. See White v. Weiser, 412 U.S. 783, 794-95, 93 S. Ct. 2348, 2354 (1973). However, the state judiciary, as well as the state legislature, is under a duty to preserve proper and timely voting procedures to ensure the state's constitutional government.

Local officials must have adequate time to redraw ward and precinct boundaries, establish precinct polling locations,

prepare for elections and inform voters of all changes. Candidates require time to assess and communicate with their constituencies and to establish residency. Voters require time to evaluate candidates and their positions. A valid plan must be in place in time for precincts to be drawn and for precinct caucuses to be conducted on schedule. This court is proceeding with a plan and timetable that will recognize these interests and still permit the legislature an opportunity to act.

III.

Appeal of Denial of Stay

Plaintiff-intervenors request that denial of their motion to stay be certified to the supreme court or that this court authorize a direct and expedited appeal. The decision to stay a proceeding is generally left to the discretion of the trial court. See Danner v. Capehart, 41 Minn. 294, 42 N.W.2d 1062 (1889); Green Tree Acceptance, Inc. v. Midwest Fed. Sav. & Loan Ass'n, 433 N.W.2d 140 (Minn. App. 1988). The denial of a motion to stay is not expressly appealable but could presumably be certified for review as an "important" and "doubtful" question. See Minn. R. Civ. App. 103.03(h). We acknowledge the sensitivity of the federalism issue and its potential statewide impact; however, the propriety of a stay is not so doubtful as to warrant the extra delay that would result from appellate review of the issue. There will be adequate time for appeal of the final Order. Plaintiff-intervenors' motion is, therefore, denied.

IV.

Adoption of Chapter 246 as Redistricting Plan

Both plaintiffs and defendant-intervenors have moved this court to accept the committee changes to Chapter 246 and hold, essentially, that Chapter 246, as amended and with any needed

technical modifications, be adopted as Minnesota's legislative redistricting plan. At this stage in the proceedings, the parties have not had an opportunity to present full argument or evidence on the extent of the infirmities in Chapter 246 and the significance of the proposed legislative amendments. The motion to adopt Chapter 246 and proposed amendments is premature and consequently denied. An order to show cause that would provide for arguments before the court would inject an additional stage in these proceedings which would cause delay. The objectives sought by the motion, if appropriate, can be achieved under the present schedule through alternative procedural means.

V.

Proposed Additional Criterion that Court-Adopted Plan be Based on Chapter 246

The defendant-intervenors have moved for the addition of a criterion that any court-adopted legislative plan be based on Minnesota Laws 1991, Chapter 246. Case law compels us to adhere as closely as possible to the intent of the legislature, as embodied in the redistricting legislation. See White, 412 U.S. 783, 93 S. Ct. 2348. We adopt as an additional criterion that all submitted plans should be based on Minnesota Laws 1991, Chapter 246.

By adopting this criterion, we do not intend to restrict unduly the parties' right to challenge specific defects in the present redistricting plan or to recommend appropriate modifications. We decline to adopt the legislative committees' proposed corrections to Chapter 246 as criteria for the parties' plans. The parties may argue that these recommended amendments are appropriate and should be considered, but, because they were not enacted into law, we decline to accept the amendments as part of our criteria.

VI.

Summary

In summary, this court orders as follows:

1. The numerous defects, including noncontiguous districts, in Minnesota Laws 1991, Chapter 246 violate Article IV, sections 2 and 3 of the Minnesota Constitution. The current districting also violates the equality of representation requirement of the United States Constitution. A plan free from constitutional infirmities must be adopted.

2. Plaintiff-intervenors' motion to stay this proceeding is denied.

3. Plaintiff-intervenors' motion for this court to certify the propriety of a stay or, in the alternative, to authorize an expedited and direct appeal of this issue to the Minnesota Supreme Court is denied.

4. Defendant-intervenors' motion to adopt as an additional criterion that any court-adopted legislative plan be based on Minnesota Laws 1991, Chapter 246 is granted.

5. Plaintiffs' motion to enforce Minnesota Laws 1991, Chapter 246, together with amendments proposed by the legislative committees on redistricting, as the reapportionment plan for the State of Minnesota, is denied.

6. The parties' oral request for an alternative format for their proposed redistricting plan is granted. At a minimum, the submitted plans must include:

a. A map of the state showing proposed districts, as well as counties and minor civil divisions (MCD's).

b. A map of the seven-county metropolitan area showing proposed districts, as well as counties and MCD's.

c. A map of the Cities of St. Paul and Minneapolis showing city boundaries, as well as MNDot features and

annotations (highways, streets, roads, and their names).

d. Detailed maps and/or written descriptions defining the boundaries of proposed legislative districts that split a MCD along VTD (voting tally district or precinct) or tract block bounds.

e. A district population report showing the population for each district, the deviation from the standard for each district, average deviation for all districts, and total deviation for the state.

f. A district census units report showing each complete census unit (counties, MCD's, VTD's, and tract blocks) and the associated population for each proposed district.

g. A political subdivision splits report showing each county, MCD, or VTD that will lie in more than one proposed legislative district.

7. The parties' written arguments on Chapter 246 violations of the Federal Voting Rights Act must be submitted by October 7, 1991. Responses must be received by October 14, 1991.

IT IS SO ORDERED.

Dated: October 1, 1991

BY THE COURT:

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C-8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

PRETRIAL ORDER NO. 5

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota

State Senate,

Defendant-Intervenors.

At oral argument on October 16, 1991, this panel requested that the parties reserve Thursday, November 14, 1991, for additional argument if required. To assist the panel in its review of Minnesota Laws, 1991, Chapter 246, and its development of a constitutionally sound, redistricting plan, the panel orders that a supplemental oral argument shall be held on November 14, 1991, at 1:30 p.m., in the Minnesota Judicial Center, Courtroom 200, to consider the following issues:

I.

Voting Rights Act Challenges

The parties have previously argued the applicability and justiciability of Voting Rights claims in this proceeding. The upcoming hearing is intended as a final opportunity to specify all particular challenges to Chapter 246 under the Voting Rights Act.

II.

Legislative History of Chapter 246

The parties should address the propriety of relying on legislative history to avoid, modify, or correct constitutional or other defects in Chapter 246. References have been made to various maps used in committee and presented during floor debate on Chapter 246. The panel requires information on the existence and availability of any redistricting maps and population data tables used in the legislative process before and during enactment of Chapter 246. The parties should focus on whether such maps or tables

i. constitute part of the redistricting law itself;

ii. constitute part of the law's legislative history; and

iii. whether the maps can be used, if part of the law's legislative history, only to resolve ambiguities or more generally to avoid specific findings of unconstitutionality.

All such maps and tables should be submitted to the panel at or before the hearing scheduled for November 14, 1991. The parties are encouraged to stipulate to the authenticity and appropriate use of such materials. Absent agreement, however, the court requests submission of appropriate, authenticating affidavits.

III.

Specific Problems

Through the parties various submissions and an independent review of Chapter 246, the panel has identified numerous errors in the text of the redistricting plan. Not all of these defects are of constitutional significance. The following is a partial, categorized list of problems to which the parties should respond in two ways: first, by addressing generally the scope of the court's authority to resolve each type of defect; and, second, by specifying appropriate corrections for each defect. This list is illustrative only; the parties are strongly encouraged to submit their own detailed lists of errors and recommended remedies.

A. Clarifications.

Many of the problems in Chapter 246 involve ambiguities that can be resolved by reference to the surrounding text. The panel is inclined to treat such problems as technical errors warranting clarification but not requiring particularized justification. See Silver v. Brown, 48 Cal. Rptr. 609, 409 P.2d 689 (1966); Miller v. Schaffer, 320 A.2d 1 (Conn. 1972). Examples include:

1. Senate district 51. The description of the boundary around the portion of the city of Hugo included in this district is ambiguous, but the street references are sufficiently clear that the intended boundary is discernible. A minor directional clarification would correct the problem.

2 Senate district 53. Chapter 246 erroneously refers to Otter "Tail" Road. There is no such road in the area being described; however, reference to an ordinary street map indicates that Otter Lake Road was apparently intended. The similarity in names seemingly permits minor correction.

3. Senate district 54. Atlantic Street and the railroad right-of-way described do not meet, but both are plausible boundaries, and an intersection between the two could be accomplished by implying a straight-line extension from each.

B. Noncontiguous districts.

Chapter 246 contains some defects that create noncontiguous districts, in violation of Minn. Const. Art. IV, § 3. Examples include:

1. Senate districts 53, 54 and 55. The boundary between senate districts 54 and 55 is specifically described under each, but the descriptions do not coincide. A gap consisting of the block between Atlantic Street and Chamber Street results. Any portion of the city of Maplewood not included in senate districts 54, 55, or 57 is assigned to senate district 53. Because this particular block is not connected to the rest of senate district 53, the district is not contiguous.

2. Senate district 5. Angora Township is specifically included in senate district 5, but the unorganized territories surrounding this township--Vermillion Lake, Sand Lake, and East Sand Lake--are not included in this district. By residual clause, they fall into senate district 6. Consequently, senate district 5 is

not contiguous.

3. Senate district 31. Portions of Olmstead County not included in senate districts 28 or 30 are assigned to district 31. However, some of these areas, including portions of Cascade, Rochester, and Marion Townships are surrounded by areas included in senate district 30, leaving senate district 31 noncontiguous.

The parties should propose remedies for each of these and other contiguity problems and cite the justifications for their proposals.

C. Ambiguous boundaries, unassigned areas, and other geographic problems.

Various other defects in Chapter 246 affect not only the dividing lines between districts but also the district populations and the court's ability to calculate population deviations from ideal district size. Examples include:

1. House districts 52A and 52B. The description of the portion of New Brighton to be included in this district is vague. Even assuming that the legislature intended the line described to move easterly along 16th Street Northwest, this rectangular portion of the city creates a district of minimal contiguity--house district 52A--and a large disparity in populations between the two house districts.

2. Senate district 53. This district contains numerous problems. The line surrounding the portion of Blaine to be included is ambiguous, particularly near Flowerfield Road, and does not include the section of Blaine north of Circle Pines that the legislature's proposed plan includes in this district. The "extension" of County Road H2 to the shore of Bald Eagle Lake is indeterminate. The boundary around Gervais Lake, shared by senate district 54, is unclear and appears to leave lake-shore area

unassigned.

3. Senate districts 25 and 35. The section of New Prague in Scott County is assigned to both of these districts.

The parties should address these and all other similar problems in Chapter 246 and recommend appropriate corrections with supporting rationale.

IV.

Legal Descriptions and Computer Files of Plans Submitted

The possibility that the nature and scope of the defects in Chapter 246 will invalidate the entire law, although remote, requires detailed review of each of the parties' alternative redistricting plan. Maps and tables for the alternative plans have been submitted, in general accordance with the format for submission previously established by the panel. However, to improve the panel's ability to analyze these proposals, the panel has also found it necessary to request (1) computer access to each proposed plan file; and (2) legal descriptions of both plans.

The first of these requirements has been accomplished, although the parties have not afforded similar access to each other. The parties are directed to authorize mutual access to their respective computer plan files as soon as is reasonably possible.

The legislature has previously submitted a legal description of its proposed plan. The panel requests that the plaintiff-intervenors submit a similarly detailed, legal description of their proposed plan by November 14, 1991.

IT IS SO ORDERED.

Dated: November 8, 1991

BY THE COURT:
Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

Memorandum

In Pretrial Order No. 4, this panel concluded that, due to certain obvious defects, Minnesota Laws 1991, Chapter 246, is unconstitutional on its face. In such a case, a court's first responsibility is to determine whether the errors in the plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan; if the plan is not uncorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislature's plan to the extent necessary to correct such defects. See Upham v. Seamon, 456 U.S. 37, 40-41, 102 S. Ct. 1518, 1520-21 (1982); Cook v. Luckett, 735 F.2d 912 (5th Cir. 1984).

Detailed analysis of Chapter 246 suggests that, although the law contains numerous errors affecting a significant number of districts, the defects are not so pervasive as to abridge the overarching requirement of judicial deference to legislative policy decisions, see White v. Weiser, 412 U.S. 783, 93 S. Ct. 2348 (1973), by developing an independent alternative plan. Absent persuasive argument establishing far-reaching, uncorrectable defects in Chapter 246, this panel is obliged to affirm those portions of the law that meet constitutional and statutory requirements and to limit the scope of its remedy to those areas in which substantial defects are present. The parties are accordingly advised of the court's evaluations in order to assist them to direct their arguments to issues properly within our scope of resolution.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

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O'Connor, Hennepin County Auditor,
individually and on behalf of all
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officers,

Defendants,

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The Seventy-seventh Minnesota
State House of Representatives

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY ORDER FOR JUDGMENT ON LEGISLATIVE REDISTRICTING

and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The Special Redistricting Panel convened hearings on July 26, August 29, September 24, October 16, and November 14, 1991.

Plaintiffs were represented by Alan W. Weinblatt, Weinblatt & Davis; plaintiff-intervenors were represented by Bruce D. Willis, Popham, Haik, Schnobrich & Kaufman, Ltd.; defendant Joan Growe, Secretary of State, was represented by John R. Tunheim, Chief Deputy Attorney General, and Jocelyn Olson, Assistant Attorney General; defendant Patrick H. O'Connor, Hennepin County Auditor, was represented by Michael O. Freeman, Hennepin County Attorney, and Toni A. Beitz, Senior Assistant Hennepin County Attorney; and defendant-intervenors were represented by John D. French and Michael L. Cheever, Faegre & Benson, and Peter S. Wattson, Senate Counsel.

All parties were directed to file legislative redistricting plans on October 7, 1991. The panel convened hearings on October 16 and November 14, 1991 for comments on the plans.

Based on the record received from the Minnesota District Court, Fourth Judicial District; the record compiled during the course of the hearings; and the submissions of the parties; the panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In January 1991, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss initiated this action in Minnesota District Court, Fourth Judicial District. They

asked the court to declare the present legislative apportionment, Minn. Stat. §§ 2.019, 2.042 through 2.702 (1990), and the present congressional apportionment, outlined in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), invalid under the Minnesota and United States Constitutions.

2. The plaintiffs further requested the court to retain jurisdiction during the 1991 session of the legislature to determine whether any legislatively enacted plans for redistricting satisfied the Minnesota and United States Constitutions and the Federal Voting Rights Act. In the absence of the enactment of a constitutionally valid method of apportionment by the legislature, the plaintiffs asked this court to make a determination of a proper legislative and congressional apportionment system for the State of Minnesota.

3. On February 15, 1991, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh served notice and statement of intervention. On March 14, 1991, plaintiffs served notice of objection to the intervention.

4. On February 25, 1991, the previously named plaintiffs and defendants Joan Growe and the Hennepin County Auditor stipulated that the court had subject matter jurisdiction; that as a result of population changes reflected in the 1990 federal census, the present legislative and congressional districts contravene the Minnesota and United States Constitutions; and authorized the Chief Judge of the Hennepin County District Court to request the Chief Justice of the State of Minnesota to appoint a panel of three district court or appellate judges to hear and decide this action.

5. On April 2, 1991, the Minnesota House of Representatives and the Minnesota Senate served notice of intervention as defendants and a statement of intervention. No party objected.

6. On May 18, 1991, the legislature passed Chapter 246,

S.F. No. 1571, establishing a legislative redistricting plan. The bill was presented to the governor on May 24, 1991.

7. On June 4, 1991, the Minnesota Supreme Court appointed the undersigned three-judge panel to hear and decide all matters, including all pretrial and trial motions, and to reach an ultimate disposition of this case.

8. On June 20, 1991, the Minnesota Supreme Court declined original jurisdiction on the question of the validity of the enactment of a number of bills, including Chapter 246, the legislative redistricting bill. A declaratory judgment action was filed in Ramsey County District Court.

9. On July 26, 1991, the special redistricting panel conducted a pretrial status conference and, on July 29, 1991, issued Pretrial Order No. 1 ordering (a) that John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh be permitted to intervene as plaintiff-intervenors; (b) that parties submit responses to the criteria adopted by the Minnesota Legislature for legislative and congressional redistricting plans; and (c) that arrangements be made to permit the panel to view the legislature's redistricting computer system.

10. On August 2, 1991, by order of Ramsey County District Court, Chapter 246 was declared to be a validly enacted law.

11. On August 16, 1991, the special redistricting panel issued Pretrial Order No. 2 establishing certain preliminary criteria for legislative and congressional redistricting and directing oral argument on other reserved criteria.

12. After the parties' arguments on the reserved criteria, the panel issued Pretrial Order No. 3 on September 13, 1991, adopting the final criteria for congressional and legislative redistricting. The criteria for legislative redistricting are as

follows:

1. The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

2. Each district is entitled to elect a single member.

3. A representative district may not be divided in the formation of a Senate district.

4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Chapman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.

5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

6. The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of

the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); Lacomb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

10. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

13. Subsequently, the panel adopted an additional criterion that all submitted plans should be based on Chapter 246. Defendant-intervenors, joined by other parties, urged the panel to adopt, as a criterion, certain "curative amendments" to Chapter 246. The amendments had passed out of the special redistricting committees of both houses on August 26, 1991, after the legislature had adjourned. However, the amendments had not been passed by the full bodies of either house, nor had they been presented to the governor for his signature. The panel declined to adopt as a criterion the legislative committees' proposed corrections to Chapter 246.

14. The August 29, 1991 Pretrial Order No. 3 also ordered suspension, until further order of the panel, of the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. Ann. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 (West Supp. 1991). The pretrial order designated the format for submission of redistricting plans and directed oral argument on various motions, including whether Chapter 246 violates the Minnesota or United States Constitutions or the Federal Voting Rights Act. Finally, recognizing that the time requirements for congressional redistricting are less stringent, the panel deferred submission of congressional redistricting plans.

15. Following submissions from the parties, the panel issued Pretrial Order No. 4, on October 1, 1991, which (a) denied plaintiff-intervenors' motion to stay this proceeding; (b) declared that the numerous facial infirmities in Chapter 246, including noncontiguous districts, violate Article IV,

sections 2 and 3 of the Minnesota Constitution; and (c) declared that facial infirmities also violate the equality of representation requirement of the fourteenth amendment to the United States Constitution. The panel denied plaintiff's motion to enforce Chapter 246, together with its "curative amendments", as the reapportionment plan for the State of Minnesota. Because no party submitted specific allegations of Voting Rights Act violations, the panel ordered submission of any Chapter 246 violations of the Federal Voting Rights Act without waiver of jurisdictional objections by October 7, 1991.

16. On October 7, 1991, defendant-intervenors the Minnesota Legislature renewed its submission of Chapter 246 together with the curative amendments adopted by the Senate and House committees on Redistricting; plaintiffs proposed adoption of the legislature's plan, with curative amendments, as the court-ordered legislative redistricting plan; defendant Secretary of State Growe supported the submission of the legislature; defendant Hennepin County Auditor supported the submission of the legislature; plaintiff-intervenors submitted a proposed legislative redistricting plan. The panel received additional submissions, not part of the record, from citizens groups and individual legislators.

17. No violations of the Federal Voting Rights Act were asserted.

18. On October 15, 1991, defendant-intervenors the Minnesota Legislature submitted a written response to the plaintiff-intervenors' proposed legislative redistricting plan. On October 16 (a) defendant Growe submitted a written response to plaintiff-intervenors' proposed legislative

redistricting plan; (b) plaintiff-intervenors submitted a written response to the legislature's redistricting plan; and (c) defendant Hennepin County Auditor submitted a written analysis of the plaintiff-intervenors' plan. On October 17 and 18, 1991, defendant-intervenor the Minnesota Legislature submitted additional responses to the plaintiff-intervenors' redistricting plan.

19. On November 4, 1991, defendant-intervenor the Minnesota Legislature submitted a congressional redistricting plan. The plan is based on S.F. No. 1597/H.F. No. 1728, adopted by the House of Representatives Committee on Redistricting and the Senate Committee on Redistricting on October 30 and 31, 1991, and referred to the full House and Senate for consideration in early January, 1992.

20. On November 8, 1991, the panel issued Pretrial Order No. 5 ordering final oral argument on (a) the existence and use of any legislative history of Chapter 246, including maps, and (b) the application of the rules of statutory interpretation to avoid, modify, or correct constitutional or other defects in Chapter 246. In addition, the panel ordered that all parties have computer access to each proposed plan file and written geographic description of both plans.

21. On November 14, 1991, defendant-intervenors the Minnesota Legislature submitted a memorandum on Chapter 246's legislative history, appending affidavits of State Representative Peter Rodosovich, State Senator Lawrence J. Pogemiller, and Craig Lindeke from the Revisor of Statutes Office. The panel has adopted the following as relevant pieces of legislative history:

a. A set of two small black and white maps, one of

the state and one of the metropolitan area. These maps were distributed to each member of the House in the House chamber on May 18, 1991, before the members voted on Chapter 246. These two maps were also distributed to each member of the Senate in the Senate chambers on May 16, 1991, before the members voted on Chapter 246. In each instance, the chief authors of the bill represented that the proposed redistricting plan was depicted in the two black and white maps.

b. A second map group consisting of four large color maps depicting respectively the areas of (1) the State of Minnesota, (2) the seven-county metropolitan area, (3) the City of Minneapolis, and (4) the City of St. Paul. The maps were used in both the House and Senate committees and displayed in the House retiring room on May 17, 1991, the House chamber on May 18, 1991, the Senate retiring room on May 16, 1991, and in the Senate chamber on May 16, 1991.

c. A group of seven reports, primarily population tables. Three of the reports were distributed to members of the House on May 18, 1991, before they voted on Chapter 246. Three of the reports were distributed to all members of the Senate on May 18, 1991, before they voted on Chapter 246. The remaining report was distributed to the members of the Senate Redistricting Committee on May 3, 1991.

CONCLUSIONS OF LAW

1. Minnesota Laws 1991, Chapter 246, violates Article IV, sections 2 and 3 of the Minnesota Constitution because, among other defects, it creates noncontiguous districts.

2. Minnesota Laws 1991, Chapter 246 violates the equality of

representation requirement of the fourteenth amendment of the United States Constitution.

3. Unless a legislative plan is incorrectably invalid, a court may not simply substitute its own reapportionment preferences for those of the state legislature. See Upham v. Seamon, 456 U.S. 37, 40-42, 102 S. Ct. 1518, 1520-21 (1982). Courts are not permitted to disregard state apportionment policy or plans without solid constitutional grounds for doing so. White v. Weiser, 412 U.S. 783, 795, 93 S. Ct. 2348, 2355 (1973) (citing Whitcomb v. Chavis, 403 U.S. 124, 160, 91 S. Ct. 1858, 1878 (1971)). The court must reconcile constitutional requirements with the goals of state political policy by limiting its modifications "to those necessary to cure any constitutional or statutory defect." Upham 456 at 43, 102 S. Ct. at 1522; see also Rybicki v. State Bd. of Elections, 574 F. Supp. 1082 (N.D. Ill. 1982) (making only those corrections necessary to remove unconstitutional defects). Such deference does not extend to the curative amendments, as they have not been adopted into law.

4. Most of the constitutional and statutory defects in Minnesota Laws 1991, Chapter 246 can be cured by ascertaining and effectuating the legislative intent see Minn. Stat. § 645.16 (1990); and by applying canons of statutory construction, Minn. Stat. §§ 645.16 through 645.43 (1990). The remaining defects require corrections and adjustments which are based on legislative policy and the adopted legislative redistricting criteria. These corrections and adjustments are made in the attached plan and explained in the annotations that will accompany the final redistricting order.

5. Minnesota Laws 1991, Chapter 246 contains no Federal Voting Rights Act violation.

BASED ON THE ENTIRE RECORD,
IT IS HEREBY ORDERED:

1. That the following reapportionment of the Minnesota Legislature, subject to amendments after the final December 3, 1991 hearing, shall be effective for the 1992 primary and general elections unless a constitutional plan is enacted by the State of Minnesota before January 21, 1992.

2. Elections conducted after January 1, 1993 shall be according to this plan or any constitutional plan adopted after this date by the State of Minnesota.

3. Submission of plans for congressional redistricting is deferred until further order of this court.

4. Subject to reconsideration following December 3 oral arguments, the stay of time periods for completion of redistricting for local units of government is dissolved on the date of the final order.

5. The panel retains jurisdiction over this matter to ensure that any bill enacted into law complies with the Minnesota and United States Constitutions and the Federal Voting Rights Act.

Dated: November 21, 1991 BY THE COURT:

/S/
Honorable Harriet Lansing

/S/
Honorable Kenneth J. Maas

/S/
Honorable William E. Walker

Memorandum

The Minnesota Constitution places the power and responsibility of redistricting with the legislature and the governor. Minn. Const., art. IV, §§ 3, 24. In the last 78 years, however, Minnesota's redistricting rule has become its exception. Only once during this time have the legislature and the governor been able to pass a redistricting plan. Consequently, the redistricting courts have been compelled to assume a more legislative role to adjust for the detrimental lack of a "current expression of the state's political preferences regarding the complicated redistricting process." LaComb v. Growe, 541 F. Supp. 145, 150-51 (D. Minn. 1982).

Following the 1990 federal census, the 1991 Minnesota House and Senate were able to pass Chapter 246, S.F. No. 1569, prescribing the boundaries of Minnesota's legislative districts. This bill was subsequently determined to be validly enacted law. The United States Supreme Court has consistently declared that when a state has enacted a redistricting plan, courts may not pre-empt the redistricting responsibility or intrude on state policy unless necessary to correct an unconstitutional plan.

A court's first responsibility is to determine whether any errors in an enacted plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan. If the plan is not incorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislative plan to the extent necessary to correct such defects.

Our detailed analysis of Chapter 246 demonstrates that there are numerous errors in Chapter 246 as enacted. The legislature's curative amendments propose approximately 160 changes in 65 pages of text. Some of the proposed amendments clarify wording and are only refinements in language which are not necessary to discern the boundaries of districts. Other proposed changes,

however, point to substantive errors requiring changes to correct defects in the statute.

In addressing the needed substantive changes, some corrections are obvious, and there is no need to employ the rules of statutory construction or to refer to legislative history. In other instances, the errors can be rectified by reference to the context of the language, the geographic context of the district or by referring to the maps or tables which form part of the legislative history. In the remaining instances where corrections and adjustments are required and legislative intent does not provide direction, we have drawn the boundaries by attempting to preserve surrounding constitutional boundaries, and by examining the submissions of the parties and weighing these and other alternatives against our adopted criteria. In no instance have we found the problems to be so incorrectable that the basic plan must be abandoned.

Plaintiff-intervenors have urged acceptance of a substantially different plan with better numerical balance. We recognize that the primary objective of redistricting is to achieve population equality in all state districts. Courts have, however, uniformly recognized that population deviations of ten percent or less in legislative plans do not affect the plan's constitutionality. The limited population deviations in the corrected Chapter 246 are in almost all instances well within the stated two percent goal. To accept an alternative plan with slightly lower population deviations over an enacted legislative plan would require us to disregard an entire body of established redistricting case law.

Plaintiffs have requested that we also establish boundaries for congressional districts. Although we have established criteria for a congressional redistricting plan, we have deferred action until the legislature and the governor have an opportunity to enact a constitutional plan. One plan has been reported out of the

committees and the legislature is scheduled to meet from January 6 through January 17, 1992, to consider the issue.

The reasons to proceed in reviewing the legislative redistricting plan have been fully addressed in our preceding orders. In keeping with the parties' requests, we are attempting to have final reapportionment in place in advance of the February precinct caucuses and to provide some certainty to local units of government who are anxious to begin their own redistricting process. We accept the principle established in Scott v. Germano, 381 U.S. 407, 409, 85 S. Ct. 1525, 1527 (1965), that state courts have a primary obligation to review redistricting issues. By proceeding as swiftly as possible, we intend to provide any time necessary for an orderly appeal process and to avoid any duplicative litigation in the federal courts. Finally, our extended analysis of Chapter 246 has left us with an enduring realization that drawing accurate and verifiable legislative boundaries for Minnesota's 201 districts is a complex and time consuming operation. In the interest of specificity and exactness, we want to provide sufficient time to examine and exclude any technical errors. Permitting the parties to examine the preliminary legislative redistricting and identify any errors before the final December 3, 1991 hearing and adoption should aid in this process.

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The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT ON LEGISLATIVE REDISTRICTING

State Senate,

Defendant-Intervenors.

The Special Redistricting Panel convened hearings on July 26, August 29, September 24, October 16, November 14, and December 3, 1991.

Plaintiffs were represented by Alan W. Weinblatt, Weinblatt & Davis; plaintiff-intervenors were represented by Bruce D. Willis and Mark B. Peterson, Popham, Haik, Schnobrich & Kaufman, Ltd.; defendant Joan Growe, Secretary of State, was represented by John R. Tunheim, Chief Deputy Attorney General, and Jocelyn Olson, Assistant Attorney General; defendant Patrick H. O'Connor, Hennepin County Auditor, was represented by Michael O. Freeman, Hennepin County Attorney, and Toni A. Beitz, Senior Assistant Hennepin County Attorney; and defendant-intervenors were represented by John D. French and Michael L. Cheever, Faegre & Benson, and Peter S. Wattson, Senate Counsel.

All parties were directed to file legislative redistricting plans on October 7, 1991. The panel convened hearings on October 16, November 14, and December 3, 1991 for comments on the plans.

Based on the record received from the Minnesota District Court, Fourth Judicial District; the record compiled during the course of the hearings; and the submissions of the parties; the panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In January 1991, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss initiated this

action in Minnesota District Court, Fourth Judicial District. They asked the court to declare the present legislative apportionment, Minn. Stat. §§ 2.019, 2.042 through 2.702 (1990), and the present congressional apportionment, outlined in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), invalid under the Minnesota and United States Constitutions.

2. The plaintiffs further requested the court to retain jurisdiction during the 1991 session of the legislature to determine whether any legislatively enacted plans for redistricting satisfied the Minnesota and United States Constitutions. In the absence of the enactment of a constitutionally valid apportionment by the legislature, the plaintiffs asked this court to devise a proper legislative and congressional apportionment for the State of Minnesota.

3. On February 15, 1991, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh served notice and statement of intervention. On March 14, 1991, plaintiffs served notice of objection to the intervention.

4. On February 25, 1991, the previously named plaintiffs and defendants Joan Growe and the Hennepin County Auditor stipulated that the court had subject matter jurisdiction; that as a result of population changes reflected in the 1990 federal census, the present legislative and congressional districts contravene the Minnesota and United States Constitutions; and that the Chief Judge of the Hennepin County District Court could request the Chief Justice of the State of Minnesota to appoint a panel of three district court or appellate judges to hear and decide this action.

5. On April 2, 1991, the Minnesota House of Representatives and the Minnesota Senate served notice of intervention as defendants and a statement of intervention. No party objected.

6. On May 18, 1991, the legislature passed Chapter 246,

S.F. No. 1571, establishing a legislative redistricting plan. The bill was presented to the governor on May 24, 1991.

7. On June 4, 1991, the Minnesota Supreme Court appointed the undersigned three-judge panel to hear and decide all matters, including all pretrial and trial motions, and to reach an ultimate disposition of this case.

8. On June 20, 1991, the Minnesota Supreme Court declined original jurisdiction on the question of the validity of the enactment of a number of bills, including Chapter 246, the legislative redistricting bill. A declaratory judgment action was filed in Ramsey County District Court.

9. On July 26, 1991, the special redistricting panel conducted a pretrial status conference and, on July 29, 1991, issued Pretrial Order No. 1 ordering (a) that John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh be permitted to intervene as plaintiff-intervenors; (b) that parties submit responses to the criteria adopted by the Minnesota Legislature for legislative and congressional redistricting plans; and (c) that arrangements be made to permit the panel to view the legislature's redistricting computer system.

10. On August 2, 1991, by order of Ramsey County District Court, Chapter 246 was declared to be a validly enacted law.

11. On August 16, 1991, the special redistricting panel issued Pretrial Order No. 2 establishing certain preliminary criteria for legislative and congressional redistricting and directing oral argument on other reserved criteria.

12. After the parties' arguments on the reserved criteria, the panel issued Pretrial Order No. 3 on September 13, 1991, adopting the final criteria for congressional and legislative redistricting. The criteria for legislative redistricting are as

follows:

1. The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

2. Each district is entitled to elect a single member.

3. A representative district may not be divided in the formation of a Senate district.

4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Chapman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.

5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

6. The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of

the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

10. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

13. Subsequently, the panel adopted an additional criterion

that all submitted plans should be based on Chapter 246. Defendant-intervenors, joined by other parties, urged the panel to adopt, as a criterion, certain "curative amendments" to Chapter 246. The amendments had passed out of the special redistricting committees of both houses on August 26, 1991, after the legislature had adjourned. However, the amendments had not been passed by the full bodies of either house, nor had they been presented to the governor for his signature. The panel declined to adopt as a criterion the legislative committees' proposed corrections to Chapter 246.

14. The August 29, 1991 Pretrial Order No. 3 also ordered suspension, until further order of the panel, of the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 (Supp. 1991). The pretrial order designated the format for submission of redistricting plans and directed oral argument on various motions, including whether Chapter 246 violates the Minnesota or United States Constitutions or the Federal Voting Rights Act. Finally, recognizing that the time requirements for congressional redistricting are less stringent, the panel deferred submission of congressional redistricting plans.

15. Following submissions from the parties, the panel issued Pretrial Order No. 4, on October 1, 1991, which (a) denied plaintiff-intervenors' motion to stay this proceeding; (b) declared that the numerous facial infirmities in Chapter 246, including noncontiguous districts, violate Article IV, sections 2 and 3 of the Minnesota Constitution; and (c) declared that facial infirmities also violate the equality of representation requirement of the fourteenth amendment to the United States Constitution. The panel denied plaintiff's motion to enforce Chapter 246, together with its

"curative amendments", as the reapportionment plan for the State of Minnesota. Because no party submitted specific allegations of Voting Rights Act violations, the panel ordered submission of any Chapter 246 violations of the Federal Voting Rights Act without waiver of jurisdictional objections by October 7, 1991.

16. On October 7, 1991, defendant-intervenors, the Minnesota Legislature, renewed its submission of Chapter 246 together with the curative amendments adopted by the Senate and House Committees on Redistricting; plaintiffs proposed adoption of the legislature's plan, with curative amendments, as the court-ordered legislative redistricting plan; defendant Secretary of State Growe supported the submission of the legislature; defendant Hennepin County Auditor supported the submission of the legislature; and plaintiff-intervenors submitted a proposed legislative redistricting plan. The panel received additional submissions from citizens groups and individual legislators, only one of which was made part of the record.

17. No violations of the Federal Voting Rights Act were asserted.

18. On October 15, 1991 defendant-intervenors submitted a written response to the plaintiff-intervenors' proposed legislative redistricting plan. On October 16, defendant Growe submitted a written response to plaintiff-intervenors' proposed legislative redistricting plan; plaintiff-intervenors submitted a written response to the legislature's redistricting plan; and defendant Hennepin County Auditor submitted a written analysis of the plaintiff-intervenors' plan. On October 17 and 18, 1991, defendant-intervenors submitted additional responses to the plaintiff-intervenors' redistricting plan.

19. On November 4, 1991, defendant-intervenors submitted a congressional redistricting plan. The plan is based on S.F.

No. 1597/H.F. No. 1728, adopted by the House of Representatives Committee on Redistricting and the Senate Committee on Redistricting on October 30 and 31, 1991, and referred to the full House and Senate for consideration in early January, 1992.

20. On November 8, 1991, the panel issued Pretrial Order No. 5 ordering final oral argument on (a) the existence and use of any legislative history of Chapter 246, including maps, and (b) the application of the rules of statutory interpretation to avoid, modify, or correct constitutional or other defects in Chapter 246. In addition, the panel ordered that all parties have computer access to each proposed plan file and written geographic description of both plans.

21. On November 14, 1991, defendant-intervenors submitted a memorandum on Chapter 246's legislative history, appending affidavits of State Representative Peter Rodosovich, State Senator Lawrence J. Pogemiller, and Craig Lindeke from the Revisor of Statutes Office. The panel has adopted the following as relevant pieces of legislative history:

a. A set of two small black and white maps, one of the state and one of the metropolitan area. These maps were distributed to each member of the House in the House chamber on May 18, 1991, before the members voted on Chapter 246. These two maps were also distributed to each member of the Senate in the Senate chambers on May 16, 1991, before the members voted on Chapter 246. In each instance, the chief authors of the bill represented that the proposed redistricting plan was depicted in the two black and white maps.

b. A second map group consisting of four large color maps depicting respectively the areas of (1) the State of Minnesota, (2) the seven-county metropolitan area, (3) the

City of Minneapolis, and (4) the City of St. Paul. The maps were used in both the House and Senate committees and displayed in the House retiring room on May 17, 1991, the House chamber on May 18, 1991, the Senate retiring room on May 16, 1991, and in the Senate chamber on May 16, 1991.

c. A group of seven reports, primarily population tables. Three of the reports were distributed to members of the House on May 18, 1991, before they voted on Chapter 246. Three of the reports were distributed to all members of the Senate on May 18, 1991, before they voted on Chapter 246. The remaining report was distributed to the members of the Senate Redistricting Committee on May 3, 1991.

CONCLUSIONS OF LAW

1. Minnesota Laws 1991, Chapter 246, violates Article IV, sections 2 and 3 of the Minnesota Constitution because, among other defects, it creates noncontiguous districts.

2. Minnesota Laws 1991, Chapter 246, violates the equality of representation requirement of the fourteenth amendment of the United States Constitution.

3. Unless a legislative plan is incorrectably invalid, a court may not simply substitute its own reapportionment preferences for those of the state legislature. See Upham v. Seamon, 456 U.S. 37, 40-42, 102 S. Ct. 1518, 1520-21 (1982). Courts are not permitted to disregard state apportionment policy or plans without solid constitutional grounds for doing so. White v. Weiser, 412 U.S. 783, 795, 93 S. Ct. 2348, 2355 (1973) (citing Whitcomb v. Chavis, 403 U.S. 124, 160, 91 S. Ct. 1858, 1878 (1971)). The court must reconcile constitutional requirements with the goals of state political policy by limiting its modifications "to those

necessary to cure any constitutional or statutory defect." Upham 456 at 43, 102 S. Ct. at 1522; see also Rybicki v. State Bd. of Elections, 574 F. Supp. 1082 (N.D. Ill. 1982) (making only those corrections necessary to remove unconstitutional defects). Such deference does not extend to the curative amendments, as they have not been adopted into law.

4. Most of the constitutional and statutory defects in Minnesota Laws 1991, Chapter 246 can be cured by ascertaining and effectuating the legislative intent, see Minn. Stat. § 645.16 (Supp. 1991); and by applying canons of statutory construction, Minn. Stat. §§ 645.16-645.43 (Supp. 1991). The remaining defects require corrections and adjustments which are based on legislative policy and the court's redistricting criteria. These corrections and adjustments are made in the attached plan and explained in the accompanying annotations.

5. Minnesota Laws 1991, Chapter 246 complies with the Federal Voting Rights Act.

BASED ON THE ENTIRE RECORD,
IT IS HEREBY ORDERED:

1. That subject to the stay issued by the United States District Court in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991), and in conformity with Minn. R. Civ. P. 54.02 the following reapportionment of the Minnesota Legislature shall be final and effective beginning with the 1992 primary and general elections, unless a constitutional plan is enacted by the State of Minnesota. The stay of time periods for completion of redistricting for local units of government is dissolved.

2. Subject to the stay issued by the United States District Court in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991),

all plans for congressional redistricting shall be submitted to this panel on or before January 17, 1992.

3. The panel retains jurisdiction over this matter to ensure that any bill enacted into law complies with the Minnesota and United States Constitutions and the Federal Voting Rights Act.

Dated: December 9, 1991 **BY THE COURT:**

/s/
Honorable Harriet Lansing

/s/
Honorable Kenneth J. Maas

/s/
Honorable William E. Walker

Memorandum

The Minnesota Constitution places the power and responsibility of redistricting with the legislature and the governor. Minn. Const., art. IV, §§ 3, 24. In the last 78 years, however, Minnesota's redistricting rule has become its exception. Only once during this time have the legislature and the governor been able to pass a redistricting plan. Consequently, courts have been compelled to assume a more legislative role to adjust for the detrimental lack of a "current expression of the state's political preferences regarding the complicated redistricting process." LaComb v. Growe, 541 F. Supp. 145, 150-51 (D. Minn. 1982).

Following the 1990 federal census, the 1991 Minnesota

House and Senate were able to pass Chapter 246, S.F. No. 1571, prescribing the boundaries of Minnesota's legislative districts. This bill was subsequently determined to be validly enacted law. The United States Supreme Court has consistently declared that when a state has enacted a redistricting plan, courts may not pre-empt the legislature's redistricting responsibility or unnecessarily intrude on state policy except as necessary to correct an unconstitutional plan. See Upham v. Seamon, 456 U.S. 37, 102 S. Ct. 1518 (1982); White v. Weiser, 412 U.S. 783, 93 S. Ct. 2348 (1973).

A court's first responsibility is to determine whether any errors in an enacted plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan. See e.g., Cook v. Luckett, 735 F.2d 912, 918 (5th Cir. 1984) (citing Upham and Weiser). If the plan is not incorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislative plan to the extent necessary to correct such defects. Upham at 41-3, 102 S. Ct. at 1521-22; Cook, 735 F.2d at 918.

Our detailed analysis of Chapter 246 reveals numerous errors in Chapter 246 as enacted. The legislature's curative amendments propose approximately 160 changes in 63 pages of text. Some of the proposed amendments clarify wording and are only refinements in language which are not necessary to discern the boundaries or contents of districts. Other proposed changes, however, point to substantive errors requiring changes to correct defects in the statute.

In addressing the needed substantive changes, some corrections were obvious, and there was no need to employ the rules of statutory construction or to refer to legislative history. In other instances, the errors could be rectified by reference to the context of the language, the geographic context of the district, or by referring to the maps or tables which form part of the legislative

history. See Minn. Stat. §§ 645.16, 645.17. In the remaining instances where corrections and adjustments were required and legislative intent was not clear, we drew the boundaries by attempting to preserve surrounding constitutional boundaries and by examining the submissions of the parties and weighing these and other alternatives against our adopted criteria. In no instance have we found the problems to be so incorrectable that the basic plan had to be abandoned.

Plaintiff-intervenors have urged acceptance of a substantially different plan with a lower average deviation. We recognize that the primary objective of redistricting is to achieve population equality in all state districts. Courts have, however, uniformly recognized that population deviations of ten percent or less in legislative plans do not affect the plan's constitutionality. See Connor v. Finch, 431 U.S. 407, 418, 97 S. Ct. 1828, 1835 (1977). The limited population deviations in the corrected Chapter 246 are in almost all instances well within two percent. To accept an alternative plan with slightly lower population deviations over an enacted legislative plan would require us to disregard an entire body of established redistricting case law.

Following the issuance of our Findings of Fact, Conclusions of Law and Preliminary Order for Legislative Redistricting, the federal district court in Emison v. Growe, No. 4-91-202, at 15 (D. Minn. Dec. 5, 1991), ordered a stay of "any future orders that [the Minnesota Special Redistricting Panel] may issue relating to the adoption of any state redistricting plan or congressional redistricting plan...until further order of [the district] court." All parties involved in the federal and state proceedings have been enjoined from enforcing or implementing any order of this court that proposes adoption of a reapportionment plan. The stay was purportedly issued in aid of federal jurisdiction and to avoid

inhibiting the legislative process before the legislature acts.

From the outset of the litigation in this court, we have proceeded with the understanding that redistricting is essentially a legislative function, and courts should not intrude in that function unless upon proper request and until the legislature has had the opportunity to reapportion. The Minnesota Legislature has acted on state legislative redistricting. It retains the power to amend the act at any time. However, the present act has been declared a valid law; it is the constitutionality of that law that has been challenged in this court.

All of the parties in this action, except the plaintiff-intervenors, have urged this court to proceed as expeditiously as possible to review the legislature's redistricting law and to take steps necessary to ensure that a valid legislative redistricting is in effect for February's precinct caucuses. The plaintiff-intervenors' counterparts in the federal action have repeatedly represented to the federal panel that the legislature's adjournment until 1992 "requires that a court conduct redistricting" and that "neither the federal nor the state court can properly defer to the legislature" because "the clock ticks toward the 1992 election process." See Plaintiff's Memorandum in Opposition to Motions for Federal Court to Abstain or Stay, at 2, 12 (August 9, 1991); Plaintiff's Reply Memorandum in Support of Motion to Stay Separate State Court Proceedings, at 6 (August 16, 1991). The federal court itself acknowledges that this litigation has reached "the eleventh hour." Emison v. Growe, No. 4-91-202, at 14 (D. Minn. Dec. 5, 1991).

The legislature has represented that its work on legislative redistricting in January 1992, will likely be limited to an attempt to pass the technical corrections bill that constituted its plan proposal to this court. In view of the governor's affidavit filed in Emison v. Growe, stating an intent to veto such a bill, and given

the time constraints posed by the upcoming caucuses, we have perceived a clear obligation to complete our review process. Our intent has been to approve a valid redistricting plan that could take effect in time for precinct caucuses, while leaving ample time for appeal, if any. Although the effective date of our order is subject to the federal court's stay, legislative redistricting is now complete and ready to be implemented absent an alternative enactment by the state and subject to whatever review is deemed necessary.

Establishing boundaries for congressional districts presents different issues because the legislature and the governor have not acted. As we stated in our November 21, 1991 order, we do not intend to proceed until they have had an opportunity to act. One plan has been reported out of the redistricting committees, and the legislature is scheduled to meet from January 6 through January 17, 1992, to consider congressional redistricting. The federal court's statement in its December 5 order (p. 7, footnote 6) that we have indicated we would issue a congressional redistricting plan by the end of December is simply wrong, without any basis and contrary to the language of our previous orders. See Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel Sept. 13, 1991) (setting state legislative redistricting schedule); Cotlow v. Growe, No. C8-91-985, at 7 (Minn. Sp. Redistricting Panel Nov. 21, 1991) (emphasizing deferral of congressional redistricting plans submission). We have not until today even scheduled a date for submission of congressional plans. Formal action on such a plan awaits resolution of the legislative process and further order from the federal court.

Legislative Redistricting

In making the following changes to boundaries of legislative districts, we have retained the legislative format to facilitate comparison with the original text. Additions to Chapter 246 have been underscored. Annotations are provided after the district descriptions in which corrections or changes have been made. In some districts in which proposed changes were rejected, annotations explain the reason for the rejection.

In interpreting the redistricting statute, various published maps and geographic data sources have been consulted. No particular preferences were given to any sources other than the official state highway map. We used the census bureau's TIGER files and data system to compare the original census block data to the language of Chapter 246, the parties' proposals, and our own changes. Where the boundaries of Chapter 246 split populated census blocks, we modified the districts to the extent necessary to preserve the census blocks.

When required changes affected district populations, we endeavored to minimize the deviations from the ideal. In general, rather than exacerbating the deviation in one district while attempting to minimize the deviation in another, we tried to equalize the districts' deviations while bringing them as close to the ideal as possible. Tables listing house and senate district populations and deviations and minority group populations have been appended as Exhibits A, B, C, and D. A tape of the electronic plan file will be made and placed on file.

Sec. 2. {2.043} FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 1 consists of all of Kittson, Lake of the Woods, Marshall, Pennington, Red Lake, and Roseau Counties, and that portion of Polk

County consisting of Angus Township, Belgium Township, Brandt Township, Brislet Township, the city of East Grand Forks, Esther Township, Euclid Township, Farley Township, Grand Forks Township, Helgeland Township, Higdem Township, Huntsville Township, Keystone Township, Northland Township, Rhinehart Township, Sandsville Township, Sullivan Township, and Tabor Township.

Subd. 2. HOUSE DISTRICTS. Senate district 1 is divided into two house districts as follows:

(a) House district 1A consists of that portion of senate district 1 not included in house district 1B.

(b) House district 1B consists of all of Pennington and Red Lake Counties, that portion of Polk County contained in senate district 1, and that portion of Marshall County consisting of the city of Alvarado, Boxville Township, Comstock Township, McCrea Township, Oak Park Township, the city of Oslo, Vega Township, the city of Viking, Viking Township, the city of Warren, and Warrenton Township.

Sec. 3. {2.053) SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 2 consists of all of Clearwater, Mahnomen, and Norman Counties, that portion of Becker County not included in senate district 9 or 11, that portion of Beltrami County consisting of Alaska Township, Battle Township, Benville Township, the city of Blackduck, Buzzle Township, Cormant Township, Durand Township, the city of Funkley, Hagali Township, Hamre Township, Hines Township, Hornet Township, the city of Kelliher, Kelliher Township, Langor Township, Lee Township, Liberty Township, the unorganized territory of Lower Red Lake, Maple Ridge Township, Minnie Township, Nebish Township, the unorganized territory of North Beltrami, O'Brien Township, Quiring Township, Roosevelt

Township, Shooks Township, Shotley Township, the unorganized territory of Shotley Brook, Spruce Grove Township, Steenerson Township, Summit Township, the unorganized territory of Upper Red Lake, Waskish Township, and Woodrow Township, that portion of Clay County consisting of the city of Felton, Felton Township, Flowing Township, the city of Georgetown, Georgetown township, Goose Prairie Township, Hagen Township, Keene Township, Kragnes Township, Morken Township, the city of Ulen, Ulen Township, and Viding Township, and that portion of Polk County not included in senate district 1.

Subd. 2. HOUSE DISTRICTS. Senate district 2 is divided into two house districts as follows:

(a) House district 2A consists of all of Norman County, that portion of Becker County consisting of Atlanta Township, Cuba Township, Hamden Township, Riceville Township, Spring Creek Township, and Walworth Township, that portion of Clay County in senate district 2, that portion of Mahnomen County consisting of the city of Bejou, Bejou Township, Chief Township, Gregory Township, the city of Mahnomen, Marsh Creek Township, Pembina Township, Popple Grove Township, Rosedale Township, and the city of Waubun, and that portion of Polk County consisting of Andover Township, Badger Township, the city of Beltrami, Bygland Township, the city of Climax, the city of Crookston, Crookston Township, the city of Erskine, Fairfax Township, Fanny Township, the city of Fertile, the city of Fisher, Fisher Township, Garden Township, Garfield Township, Gentilly Township, Godfrey Township, Grove Park Township, Hammond Township, Hubbard Township, Kertsonville Township, King Township, Knute Township, Liberty Township, Lowell Township, the city of McIntosh, the city of Mentor, Nesbit Township, the city of Nielsville, Onstad Township, Parnell Township, Reis Township, Roome Township,

Russia Township, Scandia Township, Sletten Township, Tilden Township, Tynsid Township, Vineland Township, the city of Winger, Winger Township, and Woodside Township.

(b) House district 2B consists of that portion of senate district 2 not included in house district 2A.

Sec. 4. {2.063} THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 3 consists of all of Itasca County except the unorganized territory of Bowstring Lake, that portion of Aitkin County consisting of the city of Aitkin, Aitkin Township, Ball Bluff Township, Balsam Township, Cornish Township, Fleming Township, the city of Hill City, Hill Lake Township, Jevne Township, Libby Township, Logan Township, Macville Township, Morrison Township, the unorganized territory of Northeast Aitkin, the unorganized territory of Northwest Aitkin, the city of Palisade, Spencer Township, Turner Township, Verdon Township, Waukenabo Township, and Workman Township, that portion of Koochiching County not included in senate district 6, and that portion of St. Louis County consisting of Alango Township, Fine Lakes Township, the city of Floodwood, Floodwood Township, French Township, Halden Township, Linden Grove Township, the unorganized territory of McCormack Lake (59-21), Morcom Township, Prairie Lake Township, **that portion of the** unorganized **territory of Northwest St. Louis consisting of** precinct 62-21, **that portion of the unorganized territory of Sand Lake consisting of the precinct of** -West Sand Lake (60-20), and Sturgeon Township.

Annotation: The modified list of unorganized territories and precincts in the district clarifies the portions of St. Louis County included in senate district 3 but does not alter its composition.

Subd. 2. HOUSE DISTRICTS. Senate district 3 is divided into two house districts as follows:

(a) House district 3A consists of that portion of senate district 3 not included in house district 3B.

(b) House district 3B consists of that portion of Aitkin County included in senate district 3, that portion of Itasca County consisting of Blackberry Township, the city of Bovey, the city of Coleraine, Feeley Township, Goodland Township, Grand Rapids Township, Greenway Township, Harris Township, Iron Range Township, the city of Keewatin, the unorganized territory of Little Sand Lake, Lone Pine Township, Nashwauk Township, Sago Township, Splithand Township, Trout Lake Township, the city of Warba, Wawina Township, and Wildwood Township, and that portion of St. Louis County consisting of Fine Lakes Township, the city of Floodwood, Floodwood Township, Halden Township, and Prairie Lake Township.

Sec. 5. {2.073} FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 4 consists of all of Hubbard County, that portion of Beltrami County not included in senate district 2, that portion of Cass County not included in senate district 12, that portion of Itasca County not included in senate district 3, and that portion of Wadena County not included in senate district 11.

Subd. 2. HOUSE DISTRICTS. Senate district 4 is divided into two house districts as follows:

(a) House district 4A consists of that portion of Beltrami County in senate district 4, and that portion of Hubbard County consisting of the city of Akeley, Akeley Township, Arago Township, Clay Township, Clover Township, Farden Township, Fern Township, Guthrie Township, Hart Lake Township, Helga Township, Hendrickson Township, Lake Alice Township, Lake

Emma Township, Lake George Township, Lake Hattie Township, Lakeport Township, the city of Laporte, Mantrap Township, Rockwood Township, Schoolcraft Township, Steamboat River Township, Thorpe Township, and White Oak Township.

(b) House district 4B consists of that portion of senate district 4 not included in house district 4A.

Sec. 6 {2.083} FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 5 consists of that portion of St. Louis County consisting of Alborn Township, Angora Township, Arrowhead Township, Balkan Township, the city of Biwabik, Biwabik Township, the city of Brookston, the city of Buhl, Cedar Valley Township, Cherry Township, the city of Chisholm, Clinton Township, Colvin Township, Cotton Township, Culver Township, Ellsburg Township, Elmer Township, Embarrass Township, the city of Eveleth, Fayal Township, the city of Franklin, the city of Gilbert, Great Scott Township, the unorganized territory of Hay Lake, the unorganized territory of Heikkila Lake, the city of Hibbing, the city of Iron Junction, the unorganized territory of Janette Lake, Kelsey Township, Kugler Township, **that portion of the unorganized territory of Lake Vermilion consisting of Vermilion Lake Precinct (62-17),** Lavell Township, the city of Leonidas, McDavitt Township, the city of McKinley, the city of Meadowlands, Meadowlands Township, the city of Mountain Iron, Ness Township, New Independence Township, Northland Township, Payne Township, Pike Township, the unorganized territory of Potshot Lake, **that portion of the unorganized territory of Sand Lake consisting of the precincts of East Sand Lake (59-18), 60-18, and 60-19,** Sandy Township, Stoney Brook Township, Toivola Township, Van Buren Township, Vermilion Lake Township, the city of Virginia, White Township, and Wuori Township.

Annotation: As with senate district 3, these changes simply clarify unorganized territories and precincts included in senate district 5.

Subd. 2. HOUSE DISTRICTS. Senate district 5 is divided into two house districts as follows:

(a) House district 5A consists of that portion of senate district 5 not included in house district 5B.

(b) House district 5B consists of that portion of St. Louis County consisting of Alborn Township, Arrowhead Township, Balkan Township, the city of Brookston, the city of Buhl, Cedar Valley Township, Cherry Township, the city of Chisholm, Clinton Township, Cotton Township, Culver Township, Ellsburg Township, Elmer Township, Great Scott Township, the city of Hibbing, the city of Iron Junction, the unorganized territory of Janette Lake, Kelsey Township, Lavell Township, McDavitt Township, the city of Meadowlands, Meadowlands Township, Ness Township, New Independence Township, Northland Township, Payne Township, the unorganized territory of Potshot Lake, Stoney Brook Township, Tolvola Township, and Van Buren Township.

Sec. 7. (2.093) SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 6 consists of all of Cook and Lake Counties, that portion of Koochiching County consisting of the unorganized territory of Nett Lake, and that portion of St. Louis County not included in senate district 3, 5, 7, or 8.

Subd. 2. HOUSE DISTRICTS. Senate district 6 is divided into two house districts as follows:

(a) House district 6A consists of that portion of senate district 6 not included in house district 6B.

(b) House district 6B consists of that portion of St. Louis

County consisting of Alden Township, North Star Township, Normanna Township, Gnesen Township, Rice Lake Township, Lakewood Township, Duluth Township, Canosia Township, and Fredenburg Township, and that portion of the city of Duluth not included in senate
district 7.

Sec. 8. (2.103) SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 7 consists of that portion of St. Louis County consisting of that portion of the city of Duluth lying west and south of a line described as follows: commencing at the intersection of the northern boundary of the city of Duluth and Calvary Road, easterly along Calvary Road to Woodland Avenue, southerly along Woodland Avenue to **Bruce** Street, easterly along **Bruce** Street to Wallace Avenue, southerly along Wallace Avenue to 5th Street, westerly along 5th Street to 21st Avenue, southerly along 21st Avenue to 4th Street, westerly along 4th Street to 15th Avenue, southeasterly along 15th Avenue to 1st Street, westerly along 1st Street to 12th Avenue East, southeasterly along 12th Avenue East to London Road, northeasterly along London Road to 13th Avenue East, southerly along 13th Avenue East and its extension to Lake Superior.

Annotation: Woodland Avenue does not intersect with Buffalo Street, but three streets do connect Woodland Avenue to Wallace Avenue. Using Arrowhead Road would have increased the population deviation in senate district 6 and pushed the deviation in house district 7B over the adopted, 2% maximum deviation governing all court-modified districts. Because Bruce Street improves deviations in senate district 6 and in districts 7 and 7B, it was chosen over St. Marie Street, which would create adequate but slightly higher deviations.

Subd. 2. HOUSE DISTRICTS. Senate district 7 is divided into two house districts as follows:

(a) House district 7B consists of that portion of senate district 7 lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of Duluth and Rice Lake Road, southerly and southeasterly along Rice Lake Road **and Arrowhead Road** to Mesaba Avenue, southerly along Mesaba Avenue to 13th Street, easterly along 13th Street to 6th Avenue East, southerly along 6th Avenue East **to** State Highway 194, southwesterly along State Highway 194 to Mesaba Avenue, southerly along Mesaba Avenue to Lake Avenue, northerly along Lake Avenue to 9th Street, southwesterly along 9th Street to 1st Avenue West, northwesterly along 1st Avenue West **to Clark House Creek, northwesterly along Clark House Creek to 13th Street, southwesterly along 13th Street to 5th Avenue West, southerly along 5th Avenue West** to 9th Street, southwesterly along 9th Street to **the intersection of 11th Avenue West and** Observation Road, northerly and westerly along Observation Road to Arlington Avenue, southerly along Arlington Avenue to U.S. Highway 53, southerly along U.S. Highway 53 to 14th Street, southwesterly along 14th Street to Miller Creek, southerly along Miller Creek to **an extension of 7th Street, northeasterly along the extension of 7th Street to 25th Avenue West, southeasterly along 25th Avenue West** to 6th Street, northeasterly along 6th Street to 22nd Avenue West, southeasterly along 22nd Avenue West to Superior Street, northeasterly along Superior Street to 21st Avenue West, southeasterly along 21st Avenue West **to Interstate Highway 35, southwesterly along Interstate Highway 35 to Interstate Highway 535, southeasterly along Interstate Highway 535** and its extension to St. Louis Bay.

(b) House district 7A consists of that portion of senate

district 7 not included in house district 7B.

Annotation: Four corrections in the house boundary description clarify ambiguities. Before intersecting with Mesaba Avenue, Rice Lake Road turns briefly into Arrowhead Road; a reference to the latter was included.

The description of the boundary as it moves from 1st Avenue West to Rudolph Avenue and its extension to Blackman and Orange Avenues is also ambiguous. Because the census blocks follow Clark House Creek in this area, this reference is substituted to clarify the boundary line.

Further along this boundary, Chapter 246 attempted to follow Miller Creek to an extension of 6th Street. To avoid splitting a census block, we have substituted an extension of 7th Street and then followed 25th Avenue West to 6th Street to preserve as much of the original boundary as possible.

Finally, the references to Interstate Highways 35 and 535 conform the boundary with the census block information. These changes are intended to clarify the boundary in Chapter 246 while preserving its basic form and minimizing population deviations in all of the affected districts.

Sec. 9. {2.113} EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 8 consists of all of Carlton County, that portion of St. Louis County consisting of Brevator Township, the city of Hermantown, Industrial Township, Midway Township, the city of Proctor, and Solway Township, that portion of Aitkin County not included in senate district 3, and that portion of Pine County not included in senate district 18.

Subd. 2 HOUSE DISTRICTS. Senate district 8 is divided into two house districts as follows:

(a) House district 8A consists of that portion of St. Louis County included in senate district 8, and that portion of Carlton County consisting of the city of Carlton, the city of Cloquet, the city of Scanlon, the city of Thomson, Thomson Township, and Twin Lakes Township.

(b) House district 8B consists of that portion of senate district 8 not included in house district 8A.

Sec. 10 (2.123) NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 9 consists of all of Wilkin County, that portion of Becker County consisting of the city of Audubon, Audubon Township, Cormorant Township, Lake Eunice Township, the city of Lake Park, and Lake Park Township, that portion of Clay County not included in senate district 2, and that portion of Otter Tail County consisting of Carlisle Township, Dunn Township, the city of Elizabeth, Elizabeth Township, the city of Erhard, Erhards Grove Township, Lida Township, Maplewood Township, Norwegian Grove Township, Orwell Township, Oscar Township, Pelican Township, the city of Pelican Rapids, the city of Rothsay, Scambler Township, Trondhjem Township, and Western Township.

Subd. 2. HOUSE DISTRICTS. Senate district 9 is divided into two house districts as follows:

(a) House district 9A consists of that portion of Clay County consisting of the city of Moorhead, **Moorhead Township, and those portions of Oakport Township surrounded by the city of Moorhead**.

(b) House district 9B consists of that portion of senate district 9 not included in house district 9A.

Annotation: Including the portions of Oakport Township surrounded by Moorhead in house district 9A was the simplest way to ensure contiguity in house districts 9A and 9B. The state map

of Chapter 246 does not reveal a contrary, curative legislative intent. It does suggest an intent to include Moorhead Township in house district 9A. To ensure this corrected district's compliance with the adopted, 2% deviation criterion, we added Moorhead Township to house district 9A. In instances such as these, where substantive modifications were made to eliminate constitutional defects, the modifications were drafted to comply with the adopted criteria.

Sec. 11 (2.133) TENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 10 consists of that portion of Douglas County not included in senate district 11 or 13, that portion of Otter Tail County not included in senate district 9 or 11, that portion of Pope County consisting of the city of Glenwood, Glenwood Township, Grove Lake Township, Leven Township, the city of Long Beach, Minnewaska Township, Reno Township, the city of Villard, the city of Westport, and Westport Township, and that portion of Stearns County consisting of Ashley Township, Getty Township, Raymond Township, the city of Sauk Centre, and Sauk Centre Township.

Subd. 2. HOUSE DISTRICTS. Senate district 10 is divided into two house districts as follows:

(a) House district 10A consists of that portion of Douglas County consisting of the city of Evansville, Evansville Township, Leaf Valley Township, Lund Township, the city of Millerville, Millerville Township, the city of Miltona, Miltona Township, and that portion of Otter Tail County included in senate district 10.

(b) House district 10B consists of that portion of Senate district 10 not included in house district 10A.

Sec. 12. (2.143) ELEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 11 consists of all of Todd County, that portion of Becker County

consisting of Burlington Township, Detroit Township, the city of Detroit Lakes, Erie Township, the city of Frazee, and Lake View Township, that portion of Douglas County consisting of Belle River Township, the city of Osakis, Osakis Township, and Spruce Hill Township, that portion of Otter Tail County consisting of Blowers Township, the city of Bluffton, Bluffton Township, Butler Township, Candor Township, Compton Township, Corliss Township, the city of Deer Creek, Deer Creek Township, the city of Dent, Dora Township, Eastern Township, Edna Township, Gorman Township, Hobart Township, Homestead Township, Newton Township, the city of New York Mills, Oak Valley Township, Otto Township, Paddock Township, the city of Perham, Perham Township, Pine Lake Township, the city of Vergas, the city of Wadena, and Woodside Township, that portion of Stearns County consisting of the portion of Melrose Township not surrounded by the city of Melrose, Millwood Township, and the city of St. Rosa, and that portion of Wadena County consisting of the city of Aldrich, Aldrich Township, Bullard Township, Leaf River Township, Red Eye Township, Rockwood Township, the city of Sebeka, the city of Staples, Thomastown Township, the city of Verndale, the city of Wadena, Wadena Township, and Wing River Township.

Annotation: To correct this otherwise noncontiguous district, we qualified the portion of Melrose Township to be included, explicitly excluding the portion of Melrose Township that is surrounded by the city of Melrose. This section of Melrose Township falls with the city of Melrose and other portions of Stearns County not assigned to senate districts 10, 11, 16, or 20 into senate district 14.

Subd. 2 HOUSE DISTRICTS. Senate district 11 is divided into two house districts as follows:

(a) House district 11A consists of that portion of Becker County included in senate district 11, that portion of Otter Tail County included in senate district 11, excluding Eastern Township, Oak Valley Township, and Woodside Township, and that portion of Wadena County consisting of Leaf River Township, Red Eye Township, Rockwood Township, the city of Sebeka, and the city of Wadena.

(b) House district 11B consists of that portion of senate district 11 not included in house district 11A.

Sec. 13. {2.153} TWELFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 12 consists of all of Crow Wing County, that portion of Cass County consisting of the cities of Motley and Pillager, and that portion of Morrison County not included in senate district 14 or 17.

Subd. 2. HOUSE DISTRICTS. Senate district 12 is divided into two house districts as follows:

(a) House district 12A consists of that portion of Crow Wing County consisting of the city of Brainerd, the city of Breezy Point, Center Township, the city of Crosby, the city of Crosslake, the city of Cuyuna, Dean Lake Township, the city of Emily, Fairfield Township, the city of Fifty Lakes, Gail Lake Township, Ideal Township, Irondale Township, the city of Ironton, the city of Jenkins, Jenkins Township, Lake Edwards Township, Little Pine Township, the city of Manhattan Beach, Mission Township, the city of Nisswa, Oak Lawn Township, Pelican Township, the city of Pequot Lakes, Perry Lake Township, Rabbit Lake Township, Ross Lake Township, Sibley Township, Timothy Township, the city of Trommald, the unorganized territory of West Crow Wing, and Wolford Township.

(b) House district 12B consists of that portion of senate district 12 not included in house district 12A.

Sec. 14. {2.163} THIRTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 13 consists of all of Big Stone, Grant, Lac qui Parle, Stevens, Swift, and Traverse Counties, that portion of Chippewa County not included in senate district 15, that portion of Douglas County consisting of Holmes City Township, the city of Kensington, Solem Township, and Urness Township, and that portion of Pope County not included in senate district 10 or 14.

Subd. 2. HOUSE DISTRICTS. Senate district 13 is divided into two house districts as follows:

(a) House district 13A consists of all of Grant, Stevens, and Traverse Counties, that portion of Big Stone County consisting of the city of Barry, Browns Valley Township, the city of Graceville, Graceville Township, Malta Township, Moonshine Township, and Toqua Township, that portion of Douglas County contained in senate district 13, that portion of Pope County contained in senate district 13, and that portion of Swift County consisting of the city of Appleton, Appleton Township, the city of Danvers, Edison Township, Fairfield Township, Hegbert Township, the city of Holloway, Marysland Township, Moyer Township, Shible Township, Tara Township, and West Bank Township.

(b) House district 13B consists of that portion of senate district 13 not included in house district 13A.

Sec. 15. {2.173} FOURTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 14 consists of that portion of Benton County consisting of the cities of Rice and Sartell, that portion of Morrison County consisting of Bellevue Township, the city of Bowlus, the city of Elmdale, Elmdale Township, the city of Royalton, Swan River Township, Two Rivers Township, and the city of Upsala, that portion of Pope County consisting of Bangor Township, the city of Brooten, Lake

Johanna Township, and the city of Sedan, and that portion of Stearns County not included in senate district 10, 11, 16, or 20.

Annotation: Chapter 246 assigned the Stearns County portion of Eden Valley to senate districts 14 and 20. Examination of the state map of Chapter 246, used in committee and during presentation of the bill in the house and senate, indicates an intent to place this area in senate district 20. Adding a reference to the portion of Stearns County in senate district 20 to the list of excluded areas in senate district 14 eliminates the double assignment and effectuates legislative intent.

Subd. 2. HOUSE DISTRICTS. Senate district 14 is divided into two house districts as follows:

(a) House district 14A consists of that portion of senate district 14 not included in house district 14B.

(b) House district 14B consists of that portion of Pope County contained in senate district 14, and that portion of Stearns County consisting of the city of Belgrade, the city of Brooten, the city of Cold Spring, Collegeville Township, Crow Lake Township, Crow River Township, Eden Lake Township, the city of Elrosa, Fair Haven Township, Farming Township, the city of Freeport, the city of Greenwald, Grove Township, the city of Kimball Prairie, Lake George Township, the city of Lake Henry, Lake Henry Township, Luxemburg Township, Lynden Township, Maine Prairie Township, the city of Meire Grove, the city of Melrose, the portion of Melrose Township surrounded by the city of Melrose, Munson Township, the city of New Munich, North Fork Township, Oak Township, the city of Paynesville, Paynesville Township, the city of Richmond, the city of Rockville, Rockville Township, the city of Roscoe, the city of St. Martin, St. Martin Township, the city of Spring Hill, Spring Hill Township, Wakefield Township, and Zion Township.

Annotation: To ensure contiguity, the portions of Melrose Township surrounded by the city of Melrose had to be assigned to this district.

Sec. 16. [2.183] FIFTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 15 consists of all of Kandiyohi and Renville Counties, that portion of Chippewa County consisting of the city of Granite Falls, and Granite Falls Township, that portion of McLeod County consisting of Collins Township, Lynn Township, and the city of Stewart, that portion of Meeker County consisting of Acton Township, the city of Cedar Mills, Cedar Mills Township, the city of Cosmos, Cosmos Township, Danielson Township, Greenleaf Township, and the city of Grove City, and that portion of Yellow Medicine County consisting of the city of Granite Falls.

Subd. 2 HOUSE DISTRICTS. Senate district 15 is divided into two house districts as follows:

(a) House district 15A consists of that portion of Kandiyohi County consisting of Arctander Township, Burbank Township, Colfax Township, Dovre Township, Green Lake Township, Harrison Township, Irving Township, the city of Kandiyohi, Kandiyohi Township, Lake Andrew Township, Mamre Township, the city of New London, New London Township, Norway Lake Township, the city of Pennock, the city of Regal, Roseville Township, St. Johns Township, the city of Spicer, the city of Sunburg, the city of Willmar, and Willmar Township.

(b) House district 15B consists of that portion of senate district 15 not included in house district 15A.

Sec. 17. [2.193] SIXTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 16 consists of that portion of Stearns County consisting of St. Augusta Township, the city of St. Cloud, St. Cloud Township, and the city

of Waite Park, and that portion of Benton County consisting of the city of Sauk Rapids, except that portion of the city of Sauk Rapids surrounded by Sauk Rapids Township, the portions of Sauk Rapids Township surrounded by the city of Sauk Rapids, and the city of St. Cloud, except that portion of the city of St. Cloud lying east of a line described as follows: commencing at the intersection of the eastern boundary of the city of St. Cloud and State Highway 23, southwesterly along State Highway 23 to 14th Avenue Southeast, southerly along 14th Avenue Southeast to County Road 47, easterly along County Road 47 to the eastern boundary of the city of St. Cloud.

Annotation: To resolve any confusion over the eastern boundary of this senate district, County Road 47 replaces 2nd Street Southeast. This clarification does not alter the physical location of the district boundary.

Subd. 2. HOUSE DISTRICTS. Senate district 16 is divided into two house districts as follows:

(a) House district 16A consists of that portion of Benton County in senate district 16, and that portion of Stearns County consisting of that portion of the city of St. Cloud lying east and north of a line described as follows: commencing at the intersection of the northern boundary of the city of St. Cloud and the extension of 25th Avenue North, southerly along the extension of 25th Avenue North to the Sauk River, southerly and westerly along the Sauk River to an extension of 33rd Avenue North, southerly along the extension and 33rd Avenue North to 5th Street North, easterly along 5th Street North to 30th Avenue North, southerly along 30th Avenue North and 30th Avenue South to 1st Street South, easterly along 1st Street South to 25th Avenue South, northerly along 25th Avenue South and 25th Avenue North to 2nd

Street North, easterly along 2nd Street North to Cooper Avenue North, southerly along Cooper Avenue North to West St. Germain Street, northeasterly along West St. Germain Street to 15th Avenue South, southeasterly along 15th Avenue South to 7th Street South, easterly along 7th Street South to East Lake Boulevard South, northerly along East Lake Boulevard South to 5th Street South, easterly along 5th Street South to 4th Avenue South, southerly along 4th Avenue South to 10th Street South, easterly along 10th Street south to the Mississippi River.

(b) House district 16B consists of that portion of senate district 16 not included in house district 16A.

Annotation: Because 33rd Avenue North does not cross the Sauk River, an "extension" of 33rd Avenue North was needed to bridge the gap. This extension preserves the intent of Chapter 246 while conforming to the census boundaries.

We also clarified and altered slightly the house districts' boundary between West St. Germain Street and 5th Street South. The description in Chapter 246 did not conform to the census boundaries. The new description follows both the census and the Minnesota Department of Transportation (Mn/DOT) annotations and distributes population in compliance with the 2% deviation criterion.

Sec. 18. {2.203} SEVENTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 17 consists of Mille Lacs County, that portion of Benton County not included in senate district 14 or 16, that portion of Kanabec County not included in senate district 18, that portion of Sherburne County not included in senate district 19, and that portion of Morrison County consisting of: the city of Buckman, Buckman Township, the city of Genola, Granite Township, the city of

Harding, the city of Hillman, Hillman Township, Lakin Township, the city of Lastrup, Leigh Township, Morrill Township, Mount Morris Township, Pierz Township, Pulaski Township, and Richardson Township.

Subd. 2. HOUSE DISTRICTS. Senate district 17 is divided into two house districts as follows:

(a) House district 17A consists of that portion of senate district 17 not included in house district 17B.

(b) House district 17B consists of those portions of Benton and Sherburne Counties located in senate district 17.

Sec. 19. {2.213} EIGHTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 18 consists of all of Chisago County, all of Isanti County, that portion of Kanabec County consisting of the city of Braham, Brunswick Township, Grass Lake township, the city of Grasston, and South Fork Township, and that portion of Pine County consisting of the city of Pine City, Pine City Township, the city of Rock Creek, and Royalton Township.

Annotation: By failing to include the small, unpopulated portion of the city of Braham in Kanabec County in senate district 18, Chapter 246 left this in senate district 17, with which it is not contiguous. The only reasonable correction of this defect is assigning this portion of Braham to senate district 18, which contains the rest of the city.

Subd. 2. HOUSE DISTRICTS. Senate district 18 is divided into two house districts as follows:

(a) House district 18A consists of all of Isanti County, that portion of Chisago County consisting of Lent Township and the city of Stacy, that portion of Kanabec County contained in senate district 18, and that portion of Pine County consisting of Royalton

Township.

(b) House district 18B consists of that portion of senate district 18 not included in house district 18A.

Sec. 20. {2.223} NINETEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 19 consists of that portion of Sherburne County consisting of the city of Becker, Becker Township, the city of Big Lake, Big Lake Township, the city of Clear Lake, Clear Lake Township, and the city of Elk River, and that portion of Wright County consisting of the city of Albertville, the city of Annandale, the city of Buffalo, Buffalo Township, Chatham Township, the city of Clearwater, Clearwater Township, Corinna Township, Frankfort Township, the city of Maple Lake, Maple Lake Township, the city of Monticello, Monticello Township, Otsego Township, the city of St. Michael, and Silver Creek Township.

Subd. 2. HOUSE DISTRICTS. Senate district 19 is divided into two house districts as follows:

(a) House district 19A consists of that portion of senate district 19 not included in house district 19B.

(b) House district 19B consists of that portion of Sherburne County consisting of the city of Elk River, and that portion of Wright County consisting of the city of Albertville, the city of Buffalo, Buffalo Township, Frankfort Township, Otsego Township, and the city of St. Michael.

Annotation: The legislature's proposed plan moved Chatham Township from house district 19A to house district 19B. Although such a change would improve the population deviation of 19B from 2.00% to -1.43%, the district as constructed in Chapter 246 is unambiguous and constitutionally sound. No change is warranted.

Sec. 21. {2.233} TWENTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 20 consists of that portion of Carver County consisting of the city of Hamburg, Hollywood Township, the city of Norwood, the city of Watertown, Watertown Township, the city of Young America, and Young America Township, that portion of McLeod County not included in senate district 15 or 23, that portion of Meeker County not included in senate district 15, that portion of Stearns County consisting of the city of Eden Valley, and that portion of Wright County not included in senate district 19, 33, or 34.

Annotation: Chapter 246 included in senate district 20 the portion of Wright County not included in senate districts 19 or 34. This placed a small segment of the city of Dayton in senate district 20, with which it is not contiguous. The contiguity problem is eliminated by placing this portion of Dayton in senate district 33, which contains the rest of the city, and limiting the portion of Wright County to be included in senate district 20 to that not contained in senate district 19, 33, or 34.

Subd. 2. HOUSE DISTRICTS. Senate district 20 is divided into two house districts as follows:

(a) House district 20A consists of that portion of senate district 20 not included in house district 20B.

(b) House district 20B consists of that portion of Carver County included in senate district 20, that portion of McLeod County consisting of Bergen Township, Hale Township, Helen Township, the city of Lester Prairie, the city of Plato, Rich Valley Township, the city of Silver Lake, the city of Winsted, and Winsted Township, and that portion of Wright County consisting of Albion Township, the city of Cokato, Cokato Township, French Lake Township, the city of Howard Lake, Marysville Township,

Middleville Township, the city of Montrose, the city of South Haven, Southside Township, Victor Township, the city of Waverly, and Woodland Township.

Sec. 22. {2.243} TWENTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 21 consists of all of Lincoln, Pipestone, and Rock Counties, all of Lyon County except that included in senate district 22, all of Yellow Medicine County excluding the city of Granite Falls, that portion of Murray County consisting of Cameron Township, Chanarambie Township, the city of Chandler, Ellsborough Township, the city of Lake Wilson, and Moulton Township, that portion of Nobles County consisting of the city of Adrian, the city of Ellsworth, Grand Prairie Township, Leota Township, the city of Lismore, Lismore Township, and Westside Township, and that portion of Redwood County consisting of Gales Township, Granite Rock Township, Johnsonville Township, the city of Lucan, the city of Milroy, the city of Seaforth, Sheridan Township, Underwood Township, Vail Township, the city of Vesta, Vesta Township, the city of Wabasso, Waterbury Township, and Westline Township.

Subd. 2. HOUSE DISTRICTS. Senate district 21 is divided into two house districts as follows:

(a) House district 21A consists of that portion of senate district 21 not included in house district 21B.

(b) House district 21B consists of all of Lincoln, Pipestone, and Rock Counties, that portion of Lyon County consisting of Coon Creek Township, the city of Florence, Island Lake Township, Nordland Township, and Shelburne Township, and those portions of Murray and Nobles Counties contained in senate district 21.

Sec. 23. {2.253} TWENTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 22

consists of all of Cottonwood and Jackson Counties, that portion of Brown County consisting of Albin Township, Bashaw Township, the city of Comfrey, Mulligan Township, and Stately Township, that portion of Lyon County consisting of the city of Balaton, Custer Township, the city of Garvin, Monroe Township, Rock Lake Township, and the city of Tracy, that portion of Martin County consisting of Cedar Township, the city of Ceylon, the city of Dunnell, Elm Creek Township, Fox Lake Township, Galena Township, Jay Township, Lake Belt Township, Lake Fremont Township, Manyaska Township, the city of Ormsby, the city of Sherburn, the city of Trimont, and the city of Welcome, that portion of Murray County not included in senate district 21, that portion of Nobles County not included in senate district 21, that portion of Redwood County consisting of the city of Lamberton, Lamberton Township, North Hero Township, the city of Revere, Springdale Township, and the city of Walnut Grove, and that portion of Watonwan County consisting of Adrian Township, the city of Butterfield, Butterfield Township, the city of Darfur, Long Lake Township, Nelson Township, the city of Odin, Odin Township, the city of Ormsby, and St. James Township.

Subd. 2. HOUSE DISTRICTS. Senate district 22 is divided into two house districts as follows:

(a) House district 22A consists of that portion of Cottonwood County consisting of Ann Township, Rose Hill Township, Southbrook Township, the city of Westbrook, and Westbrook Township, that portion of Jackson County consisting of Alba Township, Ewington Township, and La Crosse Township, that portion of Lyon County included in senate district 22, that portion of Murray County included in senate district 22, that portion of Nobles County included in senate district 22, and that portion of Redwood County consisting of North Hero Township, the city of

Revere, Springdale Township, and the city of Walnut Grove.

(b) House district 22B consists of that portion of senate district 22 not included in house district 22A.

Sec. 24. (2.263) TWENTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 23 consists of that portion of Blue Earth County consisting of Butternut Valley Township, Cambria Township, and Judson Township, that portion of Brown County consisting of Burnstown Township, the city of Cobden, Cottonwood Township, Eden Township, the city of Evan, the city of Hanska, Home Township, Lake Hanska Township, Leavenworth Township, Linden Township, Milford Township, the city of New Ulm, North Star Township, Prairieville Township, Sigel Township, the city of Sleepy Eye, the city of Springfield, and Stark Township, that portion of McLeod County consisting of the city of Brownton, the city of Glencoe, Glencoe Township, Penn Township, Round Grove Township, and Sumter Township, that portion of Nicollet County not included in senate district 24, that portion of Redwood County not included in senate district 21 or 22, and all of Sibley County except for Faxon Township.

Subd. 2. HOUSE DISTRICTS. Senate district 23 is divided into two house districts as follows:

(a) House district 23A consists of that portion of Brown County consisting of Burnstown Township, the city of Cobden, Eden Township, the city of Evan, Home Township, Milford Township, the city of New Ulm, North Star Township, Prairieville Township, the city of Sleepy Eye, and the city of Springfield, and that portion of Redwood County included in senate district 23.

(b) House district 23B consists of that portion of senate district 23 not included in house district 23A.

Sec. 25. (2.273) TWENTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 24 consists of that portion of Blue Earth County consisting of Lime Township, the city of Mankato, Mankato Township, **the city of North Mankato,** the city of Skyline, and South Bend Township, that portion of

Le_Sueur County consisting of the city of Cleveland, Cleveland Township, the city of Kasota, Kasota Township, the city of Le_Sueur, Ottawa Township, and Washington Township, that portion of Nicollet County consisting of Belgrade Township, the city of Mankato, the city of North Mankato, Oshawa Township, the city of St. Peter, and Traverse Township.

Annotation: Although Chapter 246 placed the Nicollet County portion of the city of North Mankato in senate district 24, it failed to include the small portion of the city located in Blue Earth County in this district, leaving the area instead in senate district 26, with which it is not contiguous. We corrected the noncontiguity problem in senate district 26 by placing the entire city of North Mankato in senate district 24.

Subd. 2. HOUSE DISTRICTS. Senate district 24 is divided into two house districts as follows:

(a) House district 24A consists of that portion of Nicollet County consisting of the city of Mankato, and that portion of Blue Earth County consisting of **that portion of** the city of Mankato **south of U.S. Highway 14, less those portions of the city of Mankato surrounded by Mankato Township, plus those portions of Mankato Township surrounded by the city of Mankato**, the city of Skyline, and South Bend Township.

(b) House district 24B consists of that portion of senate district 24 not included in house district 24A.

Annotation: Chapter 246 did not account for the portions

of Mankato that are surrounded by Mankato Township and the portions of Mankato Township that are surrounded by Mankato; consequently, house districts 24A and 24B both contained noncontiguous portions. To correct these defects, we excluded from house district 24A the surrounded portions of Mankato and included the surrounded portions of Mankato Township. To offset the resulting population increase and minimize the population deviation in house district 24A, we excluded the portion of Mankato north of Highway 12 from the district, which brought both house districts within the population criterion.

Sec. 26. {2.283} TWENTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 25 consists of all of Rice County, that portion of Dakota County consisting of the city of Northfield, that portion of Scott County consisting of the city of New Prague, that portion of Le Sueur County not included in senate district 24 or 35, and that portion of Waseca County consisting of the city of Elysian.

Annotation: Chapter 246 includes most of the city of Elysian, the portion located in Le Sueur County, in senate district 25. However, a tiny segment of the city located in Waseca County was not included in senate district 25, but instead fell into senate district 26 and, in particular, into house district 26A, with which it is not contiguous. To correct the noncontiguity problem and to avoid splitting the city of Elysian unnecessarily, this portion of Waseca County is included in senate district 25.

Subd. 2. HOUSE DISTRICTS. Senate district 25 is divided into two house districts as follows:

(a) House district 25A consists of those portions of Dakota and Scott Counties included in senate district 25, that portion of Le

Sueur County consisting of the city of Heidelberg, Lanesburgh Township, the city of Le Center, Lexington Township, the city of Montgomery, Montgomery Township, and the city of New Prague, and that portion of Rice County consisting of Bridgewater Township, the city of Dundas, Forest Township, the city of Lonsdale, the city of Northfield, Webster Township, and Wheatland Township.

(b) House district 25B consists of that portion of senate district 25 not included in house district 25A.

Sec. 27. {2.293} TWENTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 26 consists of all of Faribault County, that portion of Blue Earth County not included in senate district 23 or 24, that portion of Martin County not included in senate district 22, that portion of Waseca County not included in senate district 25 or 28, and that portion of Watonwan County not included in senate district 22.

Annotation: Including the reference to senate district 25 prevents a double assignment of the city of Elysian, and places the entire city in that district.

Subd. 2. HOUSE DISTRICTS. Senate district 26 is divided into two house districts as follows:

(a) House district 26A consists of that portion of senate district 26 not included in house district 26B.

(b) House district 26B consists of all of Faribault County, that portion of Blue Earth County consisting of Beauford Township, Danville Township, Decoria Township, the city of Eagle Lake, the city of Good Thunder, Jamestown Township, Le Ray Township, Lyra Township, McPherson Township, the city of Madison Lake, the city of Mapleton, Mapleton Township, Medo Township, the city of Pemberton, the city of St. Clair, and Sterling

Township, and that portion of Waseca County consisting of Alton Township, Byron Township, Freedom Township, the city of Janesville, Janesville Township, the city of New Richland, New Richland Township, Vivian Township, the city of Waldorf, and Wilton Township.

Sec. 28. {2.303} TWENTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 27 consists of all of Freeborn County, and that portion of Mower County not included in senate district 31.

Subd. 2. HOUSE DISTRICTS. Senate district 27 is divided into two house districts as follows:

(a) House district 27A consists of all of Freeborn County.

(b) House district 27B consists of that portion of senate district 27 not included in house district 27A.

Sec. 29. {2.313} TWENTY-EIGHTH DISTRICT.

Subd. 1. SENATE DISTRICT. Senate district 28 consists of all of Steele County, all of Dodge County except Vernon Township, that portion of Goodhue County consisting of Cherry Grove Township, Holden Township, Kenyon Township, the city of Kenyon, Roscoe Township, Wanamingo Township, and the city of Wanamingo, that portion of Olmsted County consisting of the city of Byron and Kalmar Township, and that portion of Waseca County consisting of Blooming Grove Township, Iosco Township, Otisco Township, St. Mary Township, the city of Waseca, and Woodville Township.

Subd. 2 HOUSE DISTRICTS. Senate district 28 is divided into two house districts as follows:

(a) House district 28A consists of that portion of Steele County consisting of Clinton Falls Township, Deerfield Township, Meriden Township, Owatonna Township, and the city of Owatonna, and that portion of Waseca County consisting of Blooming

Grove Township, Iosco Township, St. Mary Township, the city of Waseca, and Woodville Township.

(b) House district 28B consists of that portion of senate district 28 not included in house district 28A.

Sec. 30. {2.323} TWENTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 29 consists of all of Wabasha County, that portion of Dakota County consisting of the city of Hastings, **the portion of Marshan Township surrounded by the city of Hastings,** and Ravenna Township, and that portion of Goodhue County not included in senate district 28 or 37.

Annotation: Hastings surrounds a portion of Marshan Township, but Chapter 246 did not include the surrounded area with Hastings in senate district 29. Instead, the area fell with the remaining, leftover portions of Dakota County into senate district 37, with which it is not contiguous. This noncontiguity is eliminated by adding the surrounded portion of the township to senate district 29.

Subd. 2. HOUSE DISTRICTS. Senate district 29 is divided into two house districts as follows:

(a) House district 29A consists of that portion of Dakota County consisting of the city of Hastings, **the portion of Marshan Township surrounded by the city of Hastings,** and Ravenna Township, and that portion of Goodhue County consisting of the city of Red Wing, and Welch Township.

Annotation: Adding the section of Marshan Township into house district 29A preserves the house districts' contiguity.

(b) House district 29B consists of that portion of senate district 29 not included in house district 29A.

Sec. 31. {2.333} THIRTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 30 includes that portion of Olmsted County consisting of Cascade Township, Marion Township, Rochester Township, and the city of Rochester lying within a line described as follows: commencing at the intersection of Country Club Road Northwest with the Rochester Township boundary and the boundary of the city of Rochester, easterly along Country Club Road Northwest to County Road 122, southerly along County Road 122 to Historic Drive Southwest, southeasterly along Historic Drive Southwest to County Road 122, southerly along County Road 122 to Salem Road Southwest, southeasterly and northeasterly along Salem Road Southwest to 17th Avenue Southwest, southerly along 17th Avenue Southwest to 16th Street Southwest, easterly along 16th Street Southwest to 11th Avenue Southeast, southerly along 11th Avenue Southeast to Pinewood Road Southeast, easterly along Pinewood Road Southeast to the eastern boundary of the city of Rochester, northerly and easterly along the boundary of the city of Rochester to the intersection of the boundary of the city of Rochester and Marion Street, southeasterly along Marion Street to the boundary of the city of Rochester, southeasterly, northerly, easterly, northerly, and westerly along the boundary of the city of Rochester to the intersection of the boundary of the city of Rochester and Sunrise Avenue Southeast, northerly along Sunrise Avenue Southeast to Rose Drive Southeast, northeasterly along Rose Drive Southeast to Harbor Drive Southeast, southeasterly, easterly, and northerly along Harbor Drive Southeast to the boundary of the city of Rochester, easterly along the boundary of the city of Rochester and Eastwood Road Southeast to 40th Avenue Southeast, northerly along 40th

Avenue Southeast to the boundary of the city of Rochester, easterly, northerly, westerly, northerly, westerly, southerly, westerly, northerly, westerly, northerly along the boundary of the city of Rochester to the intersection of West River Road, northerly along West River Road to the boundary of the city of Rochester, northerly and westerly along the boundary of the city of Rochester to 55th Street Northwest, westerly along 55th Street Northwest to the boundary of the city of Rochester, northerly, westerly, southerly, and westerly along the boundary of the city of Rochester to 55th Street Northwest, westerly along 55th Street Northwest to the boundary of the city of Rochester, northerly, westerly, and southerly along the boundary of the city of Rochester to 55th Avenue Northwest, westerly along 55th Avenue Northwest to the boundary of the city of Rochester, northwesterly along the boundary to 50th Avenue Northwest, southerly along 50th Avenue Northwest to Valley High Road Northwest, easterly along Valley High Road Northwest to the western boundary of the city of Rochester, southeasterly, westerly, and southerly to 19th Street Northwest, westerly along 19th Street Northwest to the boundary of the city of Rochester, southerly, westerly, southerly, easterly, and southerly along the boundary to the point of origin.

Annotation: As constructed in Chapter 246, senate district 30 contained the entire city of Rochester and nothing else. The population of Rochester exceeds the ideal by 5,445 people or 8.34%. If left uncorrected, the district would contribute to a total maximum deviation in excess of the 10% margin typically tolerated in legislatively drawn redistricting plans. Rochester also surrounds portions of the neighboring townships. By failing to include these portions in the same district as the city, Chapter 246 also created two noncontiguous districts, senate district 31 and

house district 31A.

Both plans submitted adequately resolved the problems in senate districts 30 and 31 and house districts 30A, 30B, 31A, and 31B. With slight modification, the plaintiff-intervenors' proposed districts 30, 30A, and 30B combined with the defendant-intervenors' proposed districts 31 and 31A provide the most compact districts and create the lowest overall population deviations. The revised senate district 30 incorporates these changes.

Subd. 2. HOUSE DISTRICTS. Senate district 30 is divided into two house districts as follows:

(a) House district 30A consists of that portion of senate district 30 **not included in house district 30B.**

(b) House district 30B consists of that portion of senate district 30 **lying south and east of a line described as follows: commencing at the intersection of County Road 122 and Country Club Road Northwest, easterly along Country Club Road Northwest to 2nd Street Southwest, easterly along 2nd Street Southwest to the boundary of the city of Rochester, northerly, easterly, and southerly along the boundary of the city of Rochester to 2nd Street Southwest, easterly to the extension of 20th Avenue Southwest, northerly along the extension of 20th Avenue Southwest and 20th Avenue Southwest to the boundary of the city of Rochester, then easterly, southerly, and easterly along the boundary of the city of Rochester to 2nd Street Northwest, easterly along 2nd Street Northwest to 18th Avenue Northwest, northerly along 18th Avenue Northwest and its extension to U.S. Highway 52, northerly along U.S. Highway 52 to 7th Street Northwest, easterly along 7th Street Northwest to 1st Avenue Northeast, northerly along 1st Avenue Northeast to West Silver Lake**

Road, northwesterly along West Silver Lake Road to North Broadway Avenue, northeasterly along North Broadway Avenue to 14th Street Northeast, southeasterly along 14th Street Northeast to 3rd Avenue Northeast, northerly along 3rd Avenue Northeast to North Broadway Avenue, northeasterly along North Broadway Avenue to Northern Heights Drive Northeast, southeasterly along Northern Heights Drive Northeast to 13th Avenue Northeast, northerly along 13th Avenue Northeast and its extension to the northern boundary of Cascade Township within senate district 30, easterly along the northern boundary of Cascade Township to the eastern boundary of senate district 30.

Annotation: The changes required in senate district 30 also necessitated the drawing of a new boundary between house districts 30A and 30B. The boundary proposed by the plaintiff-intervenors creates districts containing comparably low, population deviations and was, therefore, adopted.

Sec. 32. [2.343] THIRTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 31 consists of that portion of Dodge County consisting of Vernon Township, that portion of Fillmore County not included in senate district 32, that portion of Mower County consisting of Bennington Township, Clayton Township, Frankford Township, the city of Grand Meadow, Grand Meadow Township, the city of Le Roy, Le Roy Township, Lodi Township, Pleasant Valley Township, the city of Racine, Racine Township, the city of Sargeant, Sargeant Township, and the city of Taopi, that portion of Olmsted County not included in senate district 28 or 30, and that portion of Winona County consisting of the city of St. Charles, St. Charles Township, and Saratoga Township.

Subd. 2. HOUSE DISTRICTS. Senate district 31 is divided into two house districts as follows:

(a) House district 31A consists of that portion of senate district 31 not included in house district 31B.

(b) House district 31B consists of those portions of Fillmore, Mower, and Winona Counties in senate district 31, and that portion of Olmsted County consisting of the city of Chatfield, the city of Dover, Dover Township, Elmira Township, the city of Eyota, Eyota Township, Orion Township, Quincy Township, and Viola Township.

Sec. 33. [2.353] THIRTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 32 consists of all of Houston County, that portion of Fillmore County consisting of Norway Township, the city of Peterson, the city of Rushford, and the city of Rushford Village, and that portion of Winona County not included in senate district 31.

Subd. 2. HOUSE DISTRICTS. Senate district 32 is divided into two house districts as follows:

(a) House district 32A consists of that portion of Winona County consisting of the city of Elba, Elba Township, the city of Goodview, the city of Minneiska City, the city of Minnesota City, Mount Vernon Township, the city of Rollingstone, Rollingstone Township, Whitewater Township, the city of Winona, and Winona Township.

(b) House district 32B consists of that portion of senate district 32 not included in house district 32A.

Sec. 34. [2.363] THIRTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 33 consists of that portion of Hennepin County consisting of Rogers, Corcoran, Hassan, Dayton, and Maple Grove, that portion of the city of Champlin not included in senate district 48, and that portion

of the city of Plymouth lying east and north of the line described as follows: commencing at the intersection of the northern boundary of the city of Plymouth and Interstate Highway 494, southerly along Interstate Highway 494 to **County Road** 47 easterly along **County Road** 47 to Pineview Lane North, southerly along Pineview Lane North to the Soo Line railroad tracks, easterly along the Soo Line railroad tracks to Larch Lane North, southerly along Larch Lane North to Rockford Road, easterly along Rockford Road to Zachary Lane North, southerly along Zachary Lane North to 36th Avenue North, easterly along 36th Avenue North to the eastern boundary of the city of Plymouth, **and that portion of Wright County consisting of the city of Dayton**.

Annotation: To avoid possible confusion and to incorporate the nomenclature currently used to denote the various types of highways, County Road 47 replaces Highway 47. The Wright County portion of Dayton that would otherwise be a noncontiguous part of senate district 20 is specifically included in this district.

Subd. 2. HOUSE DISTRICTS. Senate district 33 is divided into two house districts as follows:

(a) House district 33A consists of that portion of senate district 33 not included in house district 33B.

(b) House district 33B consists of that portion of the city of Plymouth in senate district 33 and that portion of the city of Maple Grove lying south and east of a line described as follows: commencing at the intersection of the eastern boundary of the city of **Maple Grove** with 101st Avenue North, westerly along 101st Avenue North to Zachary Lane, southerly along Zachary Lane to **the NSP power line south of** 97th Avenue North, **westerly** along **the NSP power line** to the extension of Xenium Lane, southerly along the extension of Xenium Lane and Xenium Lane to County

Road 30, westerly along County Road 30 to Interstate Highway 94, southerly along Interstate Highway 94 to 85th Avenue North, westerly along 85th Avenue North to **the creek north of Fish Lake, southerly along the creek to** Fish Lake, southerly along the western shore of Fish Lake to **Sunnyslope** Lane, southerly along **Sunnyslope** Lane to Timbercrest Drive, easterly along Timbercrest Drive to Zinnia, northerly along Zinnia to 73rd Avenue North, easterly along 73rd Avenue North **and its extension** to Interstate Highway 494, southerly along Interstate Highway 494 to the southern boundary of the city of Maple Grove.

Annotation: The portion of Maple Grove to be included in house district 33B should begin at the boundary of Maple Grove not Plymouth, as Chapter 246 mistakenly provides. Along the same boundary, Chapter 246 refers to 97th Street North and its extension; to conform with the census block data, the line must follow the NSP power line easterly to the Xenium Lane extension. Finally, the extensions near Fish Lake and Interstate Highway 494 are required to conform the boundary to Mn/DOT and census maps. These extensions do not alter the basic contour of the Chapter 246 boundary.

Sec. 35. {2.373} THIRTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 34 consists of that portion of Hennepin County not included in any other senate district, and that portion of Wright County consisting of the city of Delano, Franklin Township, **the city of Hanover,** the city of Rockford, and Rockford Township.

Annotation: Chapter 246 placed the Hennepin County portion of Hanover in senate district 34. It did not so include the Wright County portion of the city, leaving this section of Hanover with all remaining, leftover portions of Wright County in senate

district 20, with which it is not contiguous. Because half of the city was already contained in senate district 34, and the entire city is surrounded by area assigned to this district, we modified Chapter 246 to include this portion of Wright County in senate district 34.

Subd. 2. HOUSE DISTRICTS. Senate district 34 is divided into two house districts as follows:

(a) House district 34A consists of **the portion of Wright County included in senate district 34 and** that portion of Hennepin County consisting of the city of Hanover, the city of Greenfield, the city of Independence, the city of Minnetrista, the city of Mound, **the city of Rockford,** the city of Spring Park, and the city of St. Bonifacius.

(b) House district 34B consists of that portion of senate district 34 not included in house district 34A.

Annotation: Chapter 246 did not include the city of Rockford or the portions of Wright County contained in senate district 34 in house district 34A, leaving these areas as noncontiguous portions of house district 34B and creating large population deviations. The corrections resolve these constitutional defects and create districts that mirror those illustrated in the legislature's metro area map of Chapter 246.

Sec. 36. {2.383} THIRTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 35 consists of that portion of Carver County not included in senate district 20 or 43, that portion of Le Sueur County consisting of Derrynane Township, Sharon Township, and Tyrone Township, that portion of Scott County not included in senate district **25,** 37, or 41, and that portion of Sibley County consisting of Faxon Township.

Annotation: A reference to senate district 25 was added to eliminate the double assignment of the Scott County portion of New Prague. Placing this section of the city in senate district 25 not only prevents an unnecessary splitting of the city but also minimizes population deviations that would otherwise exceed constitutional limits.

Subd. 2. HOUSE DISTRICTS. Senate district 35 is divided into two house districts as follows:

(a) House district 35A consists of that portion of senate district 35 not included in house district 35B.

(b) House District 35B consists of that portion of Scott County consisting of Jackson Township, the city of Jordan, Louisville Township, the city of Prior Lake Sandcreek Township, the city of Shakopee, and Spring Lake Township.

Sec. 37. {2.393} THIRTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 36 consists of that portion of Dakota County consisting of that portion of the city of Burnsville lying south of a line described as follows: commencing at the intersection of the western boundary of Dakota County and County Road 42, easterly along County Road 42 to Burnsville Parkway, northeasterly along Burnsville Parkway to West 136th Street, easterly along West 136th Street to County Road 5, southerly along County Road 5 to West 138th Street, southeasterly along West 138th Street and James Avenue to 140th Street, easterly along 140th Street to McAndrews Road, easterly along McAndrews Road to Nicollet Avenue, northerly along Nicollet Avenue to State Highway 13, northeasterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, that portion of the city of Apple Valley lying south of a line described as follows: commencing at

the intersection of the northern boundary of the city of Apple Valley with State Highway 77, southerly and then easterly along State Highway 77 to Johnny Cake Ridge Road, northerly along Johnny Cake Ridge Road to the extension of Eveleth Path, easterly and northeasterly along Eveleth Path and its extension to 126th Street West, easterly and southeasterly along 126th Street West and Diamond Path to the eastern boundary of the city of Apple Valley, and that portion of the city of Lakeville north and east of a line described as follows: commencing at the intersection of the northern boundary of the city of Lakeville and Flagstaff Avenue, southerly along Flagstaff Avenue to Dodd Boulevard, northeasterly along Dodd Boulevard to the northern boundary of the city of Lakeville.

Annotation: Chapter 246 omitted a reference to James Avenue, into which West 138th Street turns before intersecting with 140th Street. The law also erroneously described the direction to be taken along 140th Street to McAndrews Road as "southwesterly." The necessary changes have been made.

Subd. 2. HOUSE DISTRICTS. Senate district 36 is divided into two house districts as follows:

(a) House district 36A consists of those portions of the cities of Apple Valley and Lakeville contained in senate district 36.

(b) House district 36B consists of that portion of senate district 36 not included in house district 36A.

Sec. 38. {2.403} THIRTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 37 consists of that portion of Scott County consisting of Credit River Township, Cedar Lake Township, New Market Township, the city of New Market, and the city of Elko, that portion of Dakota

County not included in senate district 25, 29, 36, 38, 39, or 41, and that portion of Goodhue County consisting of Cannon Falls Township, Leon Township, Stanton Township, and Warsaw Township, and the cities of Cannon Falls and Dennison.

Annotation: Chapter 246 assigned to senate district 37 the portions of Dakota County not included in senate districts 25, 29, 36, 38, or 39. However, because senate district 41 was assigned a portion of Burnsville, which is also in Dakota County, this part of the city ends up in both districts. The legislature's intent to divide Burnsville among senate districts 36, 38, and 41 appears clear from a reading of the description of those districts. The double assignment problem is corrected simply by adding the reference to senate district 41.

Subd. 2. HOUSE DISTRICTS. Senate district 37 is divided into two house districts as follows:

(a) House district 37A consists of that portion of house district 37 not included in house district 37B.

(b) House district 37B consists of that portion of senate district 37 consisting of that portion of Scott County located in senate district 37 and that portion of Dakota County consisting of that portion of the city of Lakeville included in senate district 37 and that portion of the city of Farmington lying north of a line described as follows: commencing at the intersection of the eastern boundary of the city of Farmington and the north branch of the Vermillion River, southwesterly along the north branch of the Vermillion River to Akin Road, northwesterly along Akin Road to 195th Street West, westerly along 195th Street West to Flagstaff Avenue, southerly along Flagstaff Avenue to 200th Street West, westerly along 200th Street West to the western boundary of the city of Farmington.

Annotation: Although unambiguous, the house district boundary drawn in Chapter 246 splits a populated census block by taking an extension of the boundary of Farmington westerly to Akin Road. To conform the boundary with the census information, it has been shifted slightly to the Vermillion River. The relatively minor change permits accurate calculation of each district's population.

Sec. 39. [2.413] THIRTY-EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 38 consists of that portion of Dakota County consisting of the cities of Eagan, Lilydale, and Mendota, that portion of the city of Apple Valley not included in senate district 36, that portion of the city of Burnsville north and east of a line described as follows: commencing at the intersection of the northern boundary of Dakota County and Interstate Highway 35W, southerly along Interstate Highway 35W to the Chicago Northwestern Transportation Company railroad tracks, easterly along the Chicago and Northwestern Transportation Company railroad tracks to Cliff Road, southerly and easterly along Cliff Road to Nicollet Avenue, southerly along Nicollet Avenue to State Highway 13, northeasterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, and that portion of the city of Mendota Heights lying west and south of a line described as follows: commencing at the intersection of the northern boundary of the city of Mendota Heights and State Highway 13, southwesterly along State Highway 13 to Wachtler Avenue, southerly along Wachtler Avenue to Wentworth Avenue, easterly along Wentworth Avenue to Dodd Road, southwesterly along Dodd Road to Marie Avenue, easterly along Marie Avenue to the eastern boundary of the city of Mendota Heights.

Subd. 2. HOUSE DISTRICTS. Senate district 38 is divided into two house districts as follows:

(a) House district 38A consists of that portion of senate district 38 not included in house district 38B.

(b) House district 38B consists of that portion of the city of Apple Valley in senate district 38, that portion of the city of Burnsville east of a line described as follows: Commencing at the intersection of State Highway 13 and the eastern boundary of the city of Burnsville, southwesterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, and that portion of the city of Eagan lying south of a line described as follows: commencing at the intersection of the western boundary of the city of Eagan and Diffley Road, easterly along Diffley Road to Lexington Avenue, northerly along Lexington Avenue to Yankee Doodle Road, easterly along Yankee Doodle Road to **Dodd Road,** southeasterly along **Dodd Road** to the eastern boundary of the city of Eagan.

Annotation: The Soo Line railroad tracks are parallel to Dodd Road. Because the census information uses only Dodd Road as a block boundary, however, substituting Dodd Road enables accurate calculation of the district populations.

Sec. 40. {2.423} THIRTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 39 consists of that portion of Dakota County consisting of the cities of Inver Grove Heights, South St. Paul, Sunfish Lake, West St. Paul, and that portion of the city of Mendota Heights not included in senate district 38.

Subd. 2. HOUSE DISTRICTS. Senate district 39 is divided into two house districts as follows:

(a) House district 39A consists of that portion of senate

district 39 consisting of the cities of West St. Paul and Sunfish Lake, that portion of the city of Mendota Heights included in senate district 39, that portion of the city of South St. Paul lying north and west of a line described as follows: commencing at the intersection of the southern boundary of the city of South St. Paul and 18th Avenue South, northerly along 18th Avenue South to Southview Boulevard, easterly along Southview Boulevard to 17th Avenue South, northerly along 17th Avenue South to 4th Street North, easterly along 4th Street North to 14th Avenue North, northerly along 14th Avenue North to Wentworth Avenue, easterly along Wentworth Avenue and its extension to the Mississippi River, and that portion of the city of Inver Grove Heights lying west and north of a line described as follows: commencing at the intersection of the northern boundary of the city of Inver Grove Heights and Babcock Trail, southerly along Babcock Trail to Upper 55th Street, westerly along Upper 55th Street to the western boundary of the city of Inver Grove Heights.

(b) House district 39B consists of that portion of Senate district 39 not included in house district 39A.

Sec. 41. {2.433} FORTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 40 consists of that portion of the city of Bloomington not included in senate district 41, and that portion of the city of Richfield not included in senate district 63.

Subd. 2. HOUSE DISTRICTS. Senate district 40 is divided into two house districts as follows:

(a) House district 40A consists of that portion of senate district 40 lying north and east of a line described as follows: commencing at the intersection of the northern boundary of the city of Bloomington and **Xerxes Avenue, easterly along the northern boundary of the city of Bloomington to** Interstate

Highway 35W, southerly along Interstate Highway 35W to the Soo Line railroad tracks, northeasterly along the Soo Line railroad tracks to **Lyndale Avenue South, southerly along Lyndale Avenue South to** 95th Street, easterly along 95th Street to **3rd Avenue South, northerly along 3rd Avenue South to East 95th Street, easterly along East 95th Street to Clinton Avenue South, southerly along Clinton Avenue South to East 96th Street, easterly along 96th Street to** Chicago Avenue South, northerly along Chicago Avenue South to 94th Street, easterly along 94th Street to **Riverview Avenue, southerly along Riverview Avenue to** Old Shakopee Road, northeasterly along Old Shakopee Road to Old Cedar Avenue, southeasterly along Old Cedar Avenue to the Minnesota River.

(b) House district 40B consists of that portion of senate district 40 not included in house district 40A.

Annotation: The house districts' boundary in Chapter 246 contained a few ambiguous gaps which needed to be filled. The reference to Lyndale Avenue South connects the Soo Line railroad tracks with 95th Street. A slight shift was also necessary because 95th Street does not intersect with Chicago Avenue South. Because both house districts contain fewer people than an ideal district, too large a change could have caused one or the other to exceed the 2% maximum deviation adopted for court-modified districts. The least obtrusive shift possible, is moving the boundary south along Clinton Avenue South to 96th Street. The modified line equalizes the population deviations of the districts, both of which are approximately 1% below the ideal.

To clarify that the senate district 40 portion of Richfield is contained in house district 40A, the starting point of the boundary was also moved to the western corner of Richfield and assigned the portion of senate district 40 lying north of the boundary in house

district 40A.

Sec. 42. [2.443] FORTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 41 consists of that portion of Dakota County consisting of that portion of the city of Burnsville not included in senate district 36 or 38, that portion of Scott County consisting of the city of Savage **and the area lying within a line described as follows: commencing at the intersection of County Road 18 and the eastern boundary of the city of Shakopee, southwesterly along County Road 18 to State Highway 101, southeasterly along State Highway 101 to the eastern boundary of the city of Shakopee**, and that portion of Hennepin County consisting of that portion of the city of Bloomington lying west of a line described as follows: commencing at the intersection of the southern boundary of the city of Bloomington with **an** extension of **Irwin** Avenue, **northerly along** the extension **and Irwin** Avenue to Overlook Drive, west on Overlook Drive to Normandale Boulevard, north on Normandale Boulevard to Old Shakopee Road, easterly along Old Shakopee Road to Kell Avenue, southerly along Kell Avenue to 108th Street, easterly along 108th Street to Xerxes Avenue South, northerly along Xerxes Avenue South to Old Shakopee Road, northeasterly along Old Shakopee Road to Nine Mile Creek, northerly and westerly along Nine Mile Creek to West 90th Street, southwesterly along West 90th Street to Poplar Bridge Road, easterly along Poplar Bridge Road to Kingsdale Drive, southwesterly along Kingsdale Drive to Poplar Bridge Road, southwesterly along Poplar Bridge Road to Normandale Boulevard, northerly along Normandale Boulevard to the northern boundary of the city of Bloomington, and that portion of the city of Eden Prairie not included in senate district 42 or 43.

Annotation: Senate district 41 is divided by the Minnesota River, and the only connection between the north and south halves of the district is the Bloomington Ferry Bridge. Although this bridge crosses the river within the senate district, Bloomington Ferry Road proceeds beyond the district boundary. No intersecting road exists that permits a resident of the district to remain in the district after crossing the bridge; a motorist must travel outside the district to reach another road enabling access back within the district. Because the district as constructed did not satisfy the contiguity requirement of reasonably unrestricted access, slight modification of the boundary was necessary to allow contiguous travel within the district.

We also substituted Irwin Avenue and its extension for France Avenue because France Avenue does not intersect with Bloomington's southern boundary and extending France to the boundary would split a large, populated census block. The boundary line's "northerly" direction is also clarified.

Subd. 2 HOUSE DISTRICTS. Senate district 41 is divided into two house districts as follows:

(a) House district 41A consists of that portion of senate district 41 lying north of a line described as follows: commencing with the intersection of Purgatory Creek and the western boundary of senate district 41, southeasterly along Purgatory Creek to Pioneer Trail, southeasterly along Pioneer Trail to the Bloomington Ferry Road, southerly along the Bloomington Ferry Road to Old Shakopee Road, easterly along Old Shakopee Road to the eastern boundary of senate district 41.

(b) House district 41B consists of that portion of senate district 41 not included in house district 41A.

Annotation: Pioneer Trail must be taken southeasterly to

intersect with the Bloomington Ferry Road. The change simply effectuates the intent apparent from the text read as a whole.

Sec. 43. [2.453] FORTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 42 consists of that portion of Hennepin County consisting of the city of Edina, the city of Chanhassen, and that portion of the city of Eden Prairie not included in senate district 43 and lying west and north of a line described as follows: commencing at the intersection of the southern boundary of Hennepin County with the NSP power line that extends beyond the end of Concord Drive, northerly along the NSP power line to Riverview Road, westerly along Riverview Road to Mooer Lane, northerly along Mooer Lane to Silverwood Drive, easterly along Silverwood Drive to Homeward Hills Road, northerly along Homeward Hills Road to Anderson Lakes Parkway, easterly along Anderson Lakes Parkway to Hidden Oaks Drive, northeasterly along Hidden Oaks Drive and its extension to the southern shore of Anderson Lake, southerly southeasterly and northeasterly along the southern shore of Anderson Lake to the eastern boundary of the city of Eden Prairie.

Annotation: The senate district boundary in Eden Prairie starts ambiguously; there is no clear extension of Concord Drive to the city's boundary. The reference to the nearby NSP power line conforms the district boundary with the census data. We also corrected the ambiguities arising from obvious typographical errors in the boundary description, substituting Mooer for Noder and Hills for Mills. Other typographical errors that do not affect the clarity of the text were not corrected. Finally, the unpopulated, Hennepin County portion of Chanhassen was added to this district. This change effectuates the intent evident in the legislature's metro area map of Chapter 246 and eliminates the contiguity problem that

arises by leaving this district in senate district 34.

Subd. 2. HOUSE DISTRICTS. Senate district 42 is divided into two house districts as follows:

(a) House district 42A consists of that portion of the city of Edina lying north and east of a line described as follows: commencing at the intersection of the western boundary of the city of Edina with State Highway 62, easterly along State Highway 62 to State Highway 100, southerly along State Highway 100 to West 66th Street, easterly along West 66th Street to West Shore Drive, southeasterly along West Shore Drive to Laguna Drive, easterly along Laguna Drive to Wooddale Avenue, southerly along Wooddale Avenue to Dunberry Lane, easterly along Dunberry Lane to Cornelia Drive, southerly along Cornelia Drive to West 70th Street, easterly along West 70th Street to France Avenue, southerly along France Avenue to the southern boundary of the city of Edina.

(b) House district 42B consists of that portion of senate district 42 not contained in house district 42A.

Sec. 44. {2.463} FORTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 43 consists of that portion of Carver County consisting of the cities of Chanhassen and Victoria, and that portion of Hennepin County consisting of the city of Deephaven, that portion of the city of Eden Prairie **lying north and west of a line described as follows: commencing at the intersection of the western boundary of the city of Eden Prairie and the Soo Line railroad tracks, northeasterly along the Soo Line railroad tracks to Valley View Road, easterly along Valley View Road to Baker Road, northerly along Baker Road to the northern boundary of the city of Eden Prairie,** the city of Excelsior, the city of Greenwood,

that portion of the city of Minnetonka lying south and west of a line described as follows: commencing at the intersection of the southern boundary of the city of Woodland and State Highway 101, southerly along State Highway 101 to Minnetonka Boulevard, easterly along Minnetonka Boulevard to Williston Road, southerly along Williston Road to Lake Street, easterly along Lake Street to **Maple** Lane, southerly along **Maple** Lane to State Highway 7, easterly along State Highway 7 to Interstate Highway 494, southerly along Interstate Highway 494 to the southern boundary of the city of Minnetonka, the city of Minnetonka Beach, that portion of the city of Orono lying south of the northern **boundary of Spring Park and its extension to the** shore of Lake Minnetonka, the city of Shorewood, the city of Tonka Bay, and the city of Woodland.

Annotation: Chapter 246 divided Eden Prairie among senate districts 41, 42, and 43; however, only senate district 42 described the portion of the city that it contained. The remaining area was intended to be split between senate districts 41 and 43, but no boundary was described. The adopted line, proposed by the legislature, follows the basic contours of the metro area map of Chapter 246 and produces population deviations within the court-adopted, 2% limit.

Chapter 246 erroneously referred to Christy Lane, which does not intersect with State Highway 7. Maple Lane is the nearest through street. As clarification, we also modified the description of the line bordering the portion of Orono to be included in senate district 43. Finally, we deleted a reference to Wayzata, which Chapter 246 had included in senate districts 43 and 45. Placing the city in senate district 45 minimizes the population deviations of the affected house and senate districts, all of which fall within the 2%, outer limit.

Subd. 2. HOUSE DISTRICTS. Senate district 43 is divided into two house districts as follows:

(a) House district 43A consists of that portion of senate district 43 lying in Carver County, and that portion of senate district 43 lying in Hennepin County consisting of the cities of Eden Prairie, Minnetonka Beach, Orono, and Tonka Bay, and that portion of the city of Shorewood lying west of a line described as follows: commencing at the intersection of the southern boundary of Hennepin County and First Avenue, northerly along First Avenue to Smithtown Road, westerly along Smithtown Road to Eureka Road, northerly along Eureka Road to Birch Bluff Road, easterly along Birch Bluff Road to the western boundary of the city of Tonka Bay.

(b) House district 43B consists of that portion of senate district 43 not included in house district 43A.

Annotation: By assigning only the Hennepin County cities contained in senate district 43 to house district 43A, Chapter 246 isolated the Eden Prairie portion of the house district from the rest of the district and created population deviations of over 40%. The metro area map of Chapter 246 indicates an intent to include the Carver County portions of senate district 43 in house district 43A. This change eliminates the districts' geographic and population problems. We also clarified that the portion of Shorewood contained in district 43A lies west of a line already described in the text.

Sec. 45. {2.473} FORTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 44 consists of that portion of Hennepin County consisting of the cities of Hopkins and St. Louis Park, and that portion of the city of Minnetonka lying south and east of a line described as follows:

commencing at the intersection of Interstate Highway 494 and the southern boundary of the city of Minnetonka, northerly along Interstate Highway 494 to Excelsior Boulevard, northeasterly and easterly along Excelsior Boulevard to the eastern boundary of the city of Minnetonka.

Subd. 2. HOUSE DISTRICTS. Senate district 44 is divided into two house districts as follows:

(a) House district 44B consists of that portion of senate district 44 in the city of St. Louis Park lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of St. Louis Park and Flag Avenue, southerly along Flag Avenue to Westmoreland Lane, easterly along Westmoreland Lane and Franklin Avenue and its extension to Louisiana Avenue, southerly along Louisiana Avenue to the Burlington Northern railroad tracks, southwesterly along the Burlington Northern railroad tracks to Virginia Avenue, southerly along Virginia Avenue to West 28th Street, easterly along West 28th Street to Texas Avenue, southerly along Texas Avenue to the southern boundary of the city of St. Louis Park.

Annotation: The minor change clarifies that the extension to Louisiana Avenue is an extension of Franklin Avenue.

(b) House district 44A consists of that portion of senate district 44 not included in house district 44B.

Sec. 46. {2.483} FORTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 45 consists of that portion of Hennepin County consisting of the city of Wayzata, that portion of the city of Golden Valley not included in senate district 46, the city of Medicine Lake, that portion of the city of Minnetonka not included in senate district 43 or 44, and that portion of the city of Plymouth lying south and east of a line

described as follows: commencing at the intersection of the western boundary of the city of Plymouth with County Road 6, easterly along County Road 6 to Interstate Highway 494, northerly along Interstate Highway 494 to Rockford Road, easterly along Rockford Road to Zachary Lane, southerly along Zachary Lane to 36th Avenue North, easterly along 36th Avenue North to the eastern boundary of the city of Plymouth.

Subd. 2. HOUSE DISTRICTS. Senate district 45 is divided into two house districts as follows:

(a) House district 45A consists of that portion of senate district 45 consisting of the city of Wayzata, that portion of the city of Minnetonka located in senate district 45 and that portion of the city of Plymouth located in senate district 45 lying west of Interstate Highway 494.

(b) House district 45B consists of that portion of senate district 45 not included in house district 45A.

Annotation: Although Chapter 246 placed Wayzata in senate district 45, it did not include the city in house district 45A. The reference added is necessary to preserve the districts' contiguity and to minimize their population deviations.

Sec. 47. [2.493] FORTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 46 consists of that portion of Hennepin County consisting of the cities of Crystal, New Hope, and Robbinsdale, that portion of the city of Golden Valley lying north and west of a line described as follows: commencing at the intersection of the western border of the city of Golden Valley and the extension of Earl Street, easterly along the extension and Earl Street to Independence Avenue North, northerly along Independence Avenue North to Duluth Street, easterly along Duluth Street to Winnetka Avenue, and northerly

along Winnetka Avenue to the northern boundary of the city of Golden Valley, and that portion of the city of Brooklyn Center lying south of a line described as follows: commencing at the intersection of the western boundary of the city of Brooklyn Center and 58th Avenue North, easterly along 58th Avenue North to Shingle Creek, southerly along Shingle Creek to the southern boundary of the city of Brooklyn Center.

Annotation: Chapter 246 erroneously described the portion of Golden Valley to be included in senate district 46 as the area lying north and "east" of the boundary drawn. Because the boundary forms the southern and eastern borders of a rectangular area, however, the description must read north and "west." The boundary must also travel along the extension of Earl Street already referred to in Chapter 246 before reaching Earl Street itself and Independence Avenue.

Subd. 2. HOUSE DISTRICTS. Senate district 46 is divided into two house districts as follows:

(a) House district 46A consists of that portion of senate district 46 lying west of a line described as follows: commencing at the intersection of the northern boundary of the city of Crystal with County Road 81, southeasterly along County Road 81 to the northern boundary of the city of Robbinsdale, westerly, southerly, and westerly along the northern and western boundaries of the city of Robbinsdale to 42nd Avenue North, westerly along 42nd Avenue North to the Soo Line Railroad Company tracks, southerly along the Soo Line Railroad Company tracks to the western boundary of the city of Crystal, westerly, southerly, westerly, northerly, westerly, southerly, westerly, southerly, easterly, northerly, easterly, and southerly along the western boundary of the city of Crystal to the southern boundary of senate district 46.

(b) House district 46B consists of that portion of senate district 46 not included in house district 46A.

Annotation: The legislature proposed a specific and substantial change in the house districts' boundary to include all of New Hope in house district 46A. Although this change would prevent a city split, it would slightly increase the districts' population deviations. Moreover, the text of Chapter 246 is clear. Because court-modification is justified only to clarify ambiguous language or to correct statutory or constitutional defects, we rejected this proposal. We did change U.S. Highway 52 to its new name, County Road 81, and, as requested, clarified the directions to be taken to the southern boundary of the senate district.

Sec. 48. {2.503} FORTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 47 consists of that portion of Hennepin County consisting of that portion of the city of Brooklyn Center not included in senate district 46 and that portion of the city of Brooklyn Park lying south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Brooklyn Park and the southern boundary of the city of Osseo, easterly along the southern boundary of the city of Osseo to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to 85th Avenue North, easterly along 85th Avenue North to Xerxes Avenue, southerly along Xerxes Avenue to Pearson Parkway, southeasterly along Pearson Parkway to Newton Avenue, southerly along Newton Avenue to the southern boundary of the city of Brooklyn Park.

Annotation: By following 81st Avenue North and its extension from Xerxes Avenue to Pearson Parkway, Chapter 246 unnecessarily split four populated census blocks. Eliminating the

references to 81st Avenue and its extension closely approximates the line in Chapter 246 while following census block boundaries.

Subd. 2. HOUSE DISTRICTS. Senate district 47 is divided into two house districts as follows:

(a) House district 47A consists of that portion of senate district 47 lying west of a line described as follows: commencing at the intersection of the northern boundary of senate district 47 and Noble Avenue, southerly along Noble Avenue to 83rd Avenue North, easterly along 83rd Avenue North to 82nd Avenue North, southerly and westerly along 82nd Avenue North to June Avenue, southerly along June Avenue **and Brookdale Drive** to 75th Avenue North, westerly along 75th Avenue North to Lee Avenue, southerly and westerly along Lee Avenue to Major Avenue, southerly and westerly along Major Avenue to Noble Avenue, southerly along Noble Avenue to the southern boundary of senate district 47.

(b) House district 47B consists of that portion of senate district 47 not located in house district 47A.

Annotation: June Avenue is interrupted by Brookdale Drive for approximately one block before continuing on to 75th Avenue North. The addition merely clarifies the boundary.

Sec. 49. {2.513} FORTY-EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 48 consists of that portion of Anoka County consisting of that portion of the city of Coon Rapids not included in senate district 49, the city of Spring Lake Park, that portion of the city of Blaine south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Blaine with the right-of-way of State Highway 610, southeasterly along the right-

of-way of State Highway 610 to Central Avenue Northeast, southerly along Central Avenue Northeast to 89th Avenue, easterly along 89th Avenue Northeast **to State Highway 65, northerly along State Highway 65 to an extension of 91st Avenue Northeast, easterly along the extension and 91st Avenue Northeast to Isanti Street Northeast, southerly along Isanti Street Northeast to Radisson Road Northeast, southwesterly along Radisson Road Northeast** to Hastings Street Northeast, southerly along Hastings Street Northeast **and its extension** to the southern boundary of the city of Blaine, and that portion of the city of Fridley lying north of a line described as follows: commencing at the intersection of the Mississippi River with Rice Creek, easterly along Rice Creek to East River Road, southeasterly along East River Road to Mississippi Street, easterly along Mississippi Street to Seventh Street Northeast, southerly along Seventh Street Northeast to 61st Avenue **Northeast**, easterly along 61st Avenue **Northeast** to West Moore Lake Drive, southeasterly along West Moore Lake Drive to State Highway 65, southerly along State Highway 65 to an extension of Lynde Drive, easterly along the extension of Lynde Drive and Lynde Drive to Regis Street, northerly along Regis Street to Hathaway Lane, easterly along Hathaway Lane **and its extension** to Matterhorn Drive, northerly along Matterhorn Drive to Gardena Avenue, easterly along Gardena Avenue to the eastern boundary of the city of Fridley, that portion of Ramsey County consisting of the city of Spring Lake Park, and that portion of Hennepin County consisting of that portion of the city of Brooklyn Park not included in senate district 47, the city of Osseo, and that portion of the city of Champlin lying east of a line described as follows: commencing at the intersection of the southern boundary of the city of Champlin with **U.S.** Highway 169, northerly along **U.S.** Highway 169 to Hayden

Lake Road, westerly along Hayden Lake Road to **the north-south NSP power line west of** Vera Street, northerly along **the north-south NSP power line** to French Lake Road, northeasterly along French Lake Road to Dayton Road, southeasterly along Dayton Road **and its extension** to **U.S.** Highway 169, northerly along **U.S.** Highway 169 to the Mississippi River.

Annotation: The Chapter 246 boundary in Blaine follows census boundaries, but those boundaries conflict with Mn/DOT annotations. We altered the line slightly to conform it with both Mn/DOT and census data. Although we did not add the directional portion of street names where Chapter 246 failed to do so, recognizable errors in street names were corrected. As an example, the misnamed 61st Avenue "East" was changed to "Northeast" to avoid possible confusion. We also added an extension to Hathaway Lane to bridge the gap in Chapter 246 between Hathaway and Matterhorn Drive, in conformity with the census block boundary. "United States" Highway 169 was abbreviated to the more accurate "U.S." Highway 169 designation. Dayton River Road changes to Dayton Road inside the city of Champlin and also requires an extension to U.S. Highway 169, filling a gap in the boundary drawn by Chapter 246.

Subd. 2. HOUSE DISTRICTS. Senate district 48 is divided into two house districts as follows:

(a) House district 48A consists of that portion of senate district 48 not included in house district 48B.

(b) House district 48B consists of that portion of senate district 48 located in Anoka and Ramsey Counties.

Sec. 50. [2.523] FORTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 49

consists of that portion of Anoka County consisting of the city of Anoka and that portion of the city of Coon Rapids lying north of a line described as follows: commencing at the intersection of the Mississippi River with Coon Creek, northerly along Coon Creek to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to Coon Rapids Boulevard Extension, easterly along Coon Rapids Boulevard Extension to the north-south Burlington Northern railroad tracks, northerly along the north-south Burlington Northern railroad tracks to Egret Boulevard, easterly along Egret Boulevard to U.S. Highway 10, southeasterly along U.S. Highway 10 to Pleasure Creek, and northerly along Pleasure Creek to the eastern boundary of the city of Coon Rapids.

Annotation: Coon Rapids Boulevard does not intersect with the north-south Burlington Northern railroad tracks but Coon Rapids Boulevard "Extension" does. We also added "U.S." to Highway 10 and substituted Pleasure Creek, which follows census lines, for the extension of 94th Avenue, which cut through a populated census block.

Subd. 2. HOUSE DISTRICTS. Senate district 49 is divided into two house districts as follows:

(a) House district 49A consists of that portion of senate district 49 lying north and west of a line described as follows: commencing at the intersection of the Mississippi River with the southern boundary of the campus of Anoka Ramsey State Community College, easterly along the southern boundary of the campus of Anoka Ramsey State Community College to Mississippi Boulevard, northerly along Mississippi Boulevard to Coon Rapids Boulevard, northwesterly along Coon Rapids Boulevard to Round Lake Boulevard, northerly along Round Lake Boulevard to 119th

Avenue Northwest, easterly along 119th Avenue Northwest to an extension of Lily Street Northwest, northerly along the extension of Lily Street Northwest to the Burlington Northern railroad tracks, northwesterly along the Burlington Northern railroad tracks to Main Street, easterly along Main Street to U.S. Highway 10, southeasterly along U.S. Highway 10 to Hanson Boulevard, northeasterly along Hanson Boulevard to North Dale Boulevard, easterly along North Dale Boulevard to Coon Creek, northeasterly and southeasterly along Coon Creek and Sand Creek to the eastern boundary of the city of Coon Rapids.

(b) House district 49B consists of that portion of senate district 49 not located in house district 49A.

Annotation: There is no Magnolia Street in the area of Coon Rapids described in Chapter 246. There is a Marigold Street, but the census line follows an extension of Lily Street Northwest to the railroad tracks. We followed the census line. We also used the official annotation for "U.S." Highway 10 and, because Mn/DOT maps indicate that North Dale Boulevard crosses Coon Creek just before Coon Creek runs into Sand Creek, added a reference to the former.

Sec. 51. (2.533) FIFTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 50 consists of that portion of Anoka County north of a line described as follows: commencing at the intersection of the Mississippi River with the northwestern boundary of the city of Anoka, northerly and easterly along the northern boundary of the city of Anoka to the northern boundary of the city of Coon Rapids, easterly along the northern boundary of the city of Coon Rapids to University Avenue Northeast, southerly along University Avenue Northeast to Main Street, easterly along Main Street to Jefferson

Street Northeast, northerly along Jefferson Street Northeast to **128th Avenue Northeast, easterly along 128th Avenue Northeast to Monroe Street Northeast, southerly along Monroe Street Southeast to 128th Avenue Northeast, easterly along 128th Avenue Northeast to Van Buren Street Northeast, southerly along Van Buren Street Northeast to 127th Lane Northeast, easterly along 127th Lane Northeast to Polk Street Northeast, northerly along Polk Street Northeast to 128th Avenue Northeast, easterly along 128th Avenue Northeast to Taylor Street Northeast, southerly along Taylor Street Northeast to 127th Avenue Northeast, easterly along 127th Avenue Northeast to Buchanan Street Northeast, northerly along Buchanan Street Northeast to 127th Lane Northeast, easterly along 127th Lane Northeast to Central Avenue Service Road, northerly along Central Avenue Service Road to 129th Avenue Northeast, easterly along 129th Avenue Northeast to** Central Avenue Northeast, northerly along Central Avenue Northeast to the northern boundary of the city of Blaine, easterly along the northern boundary of the city of Blaine and the northern boundary of the city of Lino Lakes to the eastern boundary of Anoka County.

Annotation: The boundary of senate district 50 in Chapter 246 is impossible to follow after turning onto Madison Street, its ambiguities resulting in part from the census bureau's loose transcription of this area's geography, which is dominated by cul-de-sacs and dead-end streets. The substituted description begins at Jefferson Sureet Northeast and picks up the Chapter 246 boundary again at Central Avenue Northeast. The line deviates somewhat from the original but does follow streets that are easily recognizable in both Mn/DOT and census maps, while minimizing the population deviations of senate districts 50 and 51 and house districts 50A and 51A.

Subd. 2. HOUSE DISTRICTS. Senate district 50 is divided into two house districts as follows:

(a) House district 50A consists of that portion of senate district 50 lying north of a line described as follows: commencing at the intersection of the **western** boundary of Anoka County with the northern boundary of the city of **Ramsey**, easterly along the northern boundary of the city of **Ramsey** and the northern boundaries of the cities of **Andover and** Ham Lake to Central Avenue Northeast, southerly along Central Avenue Northeast to the northern boundary of the city of Blaine, easterly along the northern boundary of the city of Blaine and the northern boundary of the city of Lino Lakes to the eastern boundary of Anoka County.

(b) House district 50B consists of that portion of senate district 50 not included in house district 50A.

Annotation: The Chapter 246 boundary for these districts contains two mistakes. First, it starts at the "eastern" boundary of Anoka County; however, because the line purports to travel along the northern boundaries of Andover and Ham Lake, and these cities lie west of the county's eastern boundary, the description should begin at the western boundary of Anoka County. Second, while the line should travel easterly along the boundary of Andover, it cannot begin there because Andover lies in the middle of Anoka county. The boundary line should begin at the intersection of the northern boundary of the city of Ramsey and the western boundary of Anoka County. The metro area map of Chapter 246 supports these changes.

Sec. 52. [2.543] FIFTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 51 consists of that portion of Anoka County consisting of all of the cities of Centerville, Lexington, and Lino Lakes, and that portion

of the city of Blaine not included in senate district 48, 50, or 53, and that portion of Washington County north of a line described as follows: commencing at the intersection of the western boundary of the city of Hugo with the southern boundary of the city of Hugo, easterly along the southern boundary of the city of Hugo to Goodview Avenue, northeasterly and northerly along Goodview Avenue to 137th Street North, easterly along 137th Street North to Homestead Avenue North, northerly along Homestead Avenue North to 140th Street North, easterly along 140th Street North to the eastern boundary of the city of Hugo, southerly along the eastern boundary of the city of Hugo to the southern boundary of May Township, easterly along the southern boundary of May Township to the eastern boundary of Washington County.

Annotation: The addition of "northeasterly" accounts for the short distance for which Goodview Avenue travels in that direction after intersecting with the Hugo boundary and before the street turns due north.

Subd. 2. HOUSE DISTRICTS. Senate district 51 is divided into two house districts as follows:

(a) House district 51A consists of the city of Lexington and that portion of the city of Blaine included in senate district 51.

(b) House district 51B consists of that portion of senate district 51 not included in house district 51A.

Sec. 53. {2.553} FIFTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 52 consists of that portion of Anoka County consisting of the cities of Columbia Heights and Hilltop and that portion of the city of Fridley not included in senate district 48, and that portion of Ramsey County consisting of the cities of Blaine, Mounds View, and New Brighton.

Annotation: The unpopulated, Ramsey County portion of Blaine was not assigned by Chapter 246 to any district. Although this area could be assigned to any of three districts without affecting contiguity or population distribution, placing it in senate district 52 creates the most compact district and complies with the legislature's intent evident in the metro area map of Chapter 246.

Subd. 2. HOUSE DISTRICTS. Senate district 52 is divided into two house districts as follows:

(a) House district 52A consists of that portion of senate district 52 not included in house district 52B.

(b) House district 52B consists of that portion of Ramsey County consisting of the cities of Blaine and Mounds View and that portion of the city of New Brighton located north and east of a line described as follows: commencing at the intersection of 16th Street Northwest with the western boundary of the city of New Brighton, easterly along 16th Street Northwest to Silver Lake Road, southerly along Silver Lake Road to the southern boundary of the city of New Brighton.

Annotation: The Ramsey County portion of Blaine added to senate district 52 is also added to house district 52B, for the same reasons. The description of the boundary dividing New Brighton between the two house districts has been changed. Chapter 246 attempted to run the districts' boundary easterly along the western boundary of New Brighton, which cannot be done. A more significant defect arises from assigning the relatively small segment of the city surrounded by the line described to house district 52B; both districts are left with population deviations exceeding 50%. However, simply exchanging the two portions of New Brighton for one another greatly reduces both house districts' population deviations to under 1%. Reference to the metro area

map of Chapter 246 indicates a legislative intent in consonance with this change.

Sec. 54. {2.563} FIFTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 53 consists of that portion of Ramsey County consisting of the cities of Arden Hills, Shoreview, North Oaks, Gem Lake, and Vadnais Heights; that portion of White Bear Township bordered by boundaries of Anoka County and the cities of Shoreview and North Oaks; those portions of the city of White Bear Lake and White Bear Township lying westerly of a line described as follows: commencing at the intersection of Otter Lake Road and the northern boundary of the city of Gem Lake, northerly along Otter Lake Road to County Road H-2, easterly along County Road H-2 to Bald Eagle Boulevard, southeasterly along Bald Eagle Boulevard and an extension of Bald Eagle Boulevard to the southeastern shoreline of Bald Eagle Lake, northerly, easterly, and northerly along the shoreline of Bald Eagle Lake to the northern boundary of Ramsey County; and that portion of the city of Little Canada not included in senate district 54; that portion of the city of Maplewood lying within a line described as follows: commencing at the intersection of the northern boundary of the city of Maplewood and White Bear Avenue, southerly along White Bear Avenue to County Road C, westerly along County Road C to Keller Parkway, northerly along Keller Parkway to the western boundary of the city of Maplewood, northerly and easterly along the boundary of the city of Maplewood to the point of origin; and that portion of Anoka County consisting of the city of Circle Pines and that portion of the city of Blaine lying within a line described as follows: commencing at the intersection of

Interstate Highway 35W and the northern boundary of Ramsey County, northerly along Interstate Highway 35W to an extension of 92nd Avenue Northeast, easterly along the extension of 92nd Avenue Northeast to Leyte Street Northeast, southerly along Leyte Street Northeast to 89th Avenue Northeast, easterly along 89th Avenue Northeast to Naples Street Northeast, northerly along Naples Street to Flowerfield Road, easterly along the extension and Flowerfield Road to Lexington Avenue, and northerly, easterly, southerly, easterly, southerly, and westerly along the boundaries of the city of Blaine to the point of origin.

Annotation: Chapter 246 contained an unnecessary and confusing reference to a railroad right-of-way, which has been deleted. The law referred to Otter Lake Road but also to Otter "Tail" Road; Otter Lake Road is correct. Chapter 246 also attempted to run the district line from Bald Eagle Boulevard to the shoreline of Bald Eagle Lake, but an extension is required. Such an extension is difficult to draw because Bald Eagle Boulevard parallels the shoreline. Moreover, the long, populated census block that borders the lake in this area prevents a simple extension to the lake of one of the nearby streets. However, the change made does preserve the basic boundary of Chapter 246, while following the census block boundaries.

To clarify the boundaries of senate districts 53 and 54, near Gervais Lake, we specifically described the portion of Maplewood to be included in this district. Finally, we rejected the legislature's proposal to add a section of Blaine lying north of Circle Pines to senate district 53 and house district 53A. Without the proposed change, house districts 53A and 51A both exceed the 2% deviation criterion. However, the districts as originally constructed by the legislature are within constitutional limits. Absent a constitutional defect or an ambiguity in this portion of the boundary, the change

proposed, although desirable, cannot be adopted.

Subd. 2. HOUSE DISTRICTS. Senate district 53 is divided into two house districts as follows:

(a) House district 53A consists of that portion of senate district 53 not included in house district 53B.

(b) House district 53B consists of that portion of senate district 53 consisting of the cities of North Oaks, Gem Lake, and Vadnais Heights; those portions of **the cities of Little Canada and Maplewood,** White Bear Township, and the city of White Bear Lake described in subdivision 1; and that portion of the city of Shoreview lying **east** of a line described as follows: commencing at the intersection of Hodgson Road and **State Highway 96, southeasterly along Hodgson Road to** Snail Lake Boulevard, westerly, southerly, and westerly along Snail Lake Boulevard to County Road F, westerly along County Road F to Lexington Avenue and the western boundary of the city, **and** southerly, easterly, northerly, **and westerly** along the boundaries of the city of Shoreview to the point of origin.

Annotation: As constructed in Chapter 246, house district 53A is not contiguous and, although their precise contents are difficult to discern, house districts 53A and 53B both far exceed the constitutional limit for population deviation. Because the two portions of Shoreview to be included in house district 53B overlap south of Snail Lake Boulevard, we consulted the black and white and the color metro area maps of Chapter 246 to resolve the ambiguity. The maps, although lacking detailed annotations, illustrate the portions of Shoreview to be included in each house district. They also reveal that house district 53B was intended to contain the senate district portions of Little Canada and Maplewood. The changes reflect the legislature's apparent intent and

create contiguous districts that satisfy constitutional population requirements and the adopted, 2% limit.

Sec. 55. {2.573} FIFTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 54 consists of that portion of Ramsey County consisting of the cities of Roseville, St. Anthony, Lauderdale, and Falcon Heights, that portion of the city of Maplewood lying within a line described as follows: commencing at the intersection of Rice Street and Larpenteur Avenue, easterly along Larpenteur Avenue to DeSoto **Street** and a railroad right-of-way, northeasterly along the railroad right-of-way and an extension of it to Parkway Drive, northeasterly along Parkway Drive to Frost Avenue, easterly along Frost Avenue to **Chamber** Street, northerly along **Chamber** Street **and its extension** to **an extension of** the railroad right-of-way, northeasterly along **the extension and** the railroad right-of-way to Hazelwood Street, northerly along Hazelwood Street to State Highway 36, easterly along State Highway 36 to White Bear Avenue, northerly along White Bear Avenue to County Road C, westerly along County Road C **to Keller Parkway, northerly along Keller Parkway** to the western boundary of the city of Maplewood, **southerly and westerly** along the western boundary of the city of Maplewood to the point of origin; that portion of the city of Little Canada lying within a line described as follows: commencing at the intersection of the northern boundary of the city of Little Canada and Rice Street, southerly, easterly, and northerly along the boundary of the city of Little Canada to **the intersection of Keller Parkway and the southern boundary of senate district 53, northerly and** westerly along Keller Parkway to Little Canada Road, westerly along Little Canada Road to Interstate Highway 35E, northerly along Interstate Highway 35E to Interstate Highway

694, northwesterly along Interstate Highway 694 to the northern boundary of the city of Little Canada, and westerly along the northern boundary of the city of Little Canada to the point of origin, and that portion of Hennepin County consisting of the city of St. Anthony.

Annotation: To avoid any confusion, DeSoto "Avenue" was corrected to DeSoto "Street." We also changed Atlantic Street to Chamber Street. Chapter 246 erroneously refers to both streets in its two descriptions of this boundary between senate districts 54 and 55. The metro area maps do not resolve the ambiguity. The choice of Chamber results, however, in smaller population deviations for senate districts 54 and 55 and house districts 54B and 55B. Whether Atlantic or Chamber Street is used, extensions are necessary to connect the street with the railroad right-of-way.

To finish the boundary description around Gervais Lake, we also clarified the portions of Maplewood and Little Canada to be included in this district. Although the descriptions are lengthier than those contained in Chapter 246, the modifications have not altered the content of the affected districts in this area.

Subd. 2. HOUSE DISTRICTS. Senate district 54 is divided into two house districts as follows:

(a) House district 54A consists of that portion of senate district 54 not included in house district 54B.

(b) House district 54B consists of those portions of the cities of Little Canada and Maplewood contained in senate district 54, and that portion of the city of Roseville lying within a line described as follows: commencing at the intersection of Snelling Avenue with the northern boundary of the city, southerly along Snelling Avenue to County Road C, easterly along County Road C to Hamline Avenue, southerly along Hamline Avenue to **State**

Highway 36, easterly along **State** Highway 36 to Lexington Avenue, southerly along Lexington Avenue to County Road B, easterly along County Road B to the eastern boundary of the city of Roseville, and northerly and **westerly** along the boundaries of the city of Roseville to the point of origin.

Annotation: The current annotation for State Highway 36 is used. Westerly was substituted for "easterly" as required to return the boundary line to the point of origin.

Sec. 56. {2.583} FIFTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 55 consists of that portion of Ramsey County consisting of the city of North St. Paul; that portion of the city of White Bear Lake not included in senate district 53; that portion of White Bear Township not included in senate district 53; that portion of Maplewood lying within a line described as follows: commencing at the intersection of Century Avenue and Interstate Highway 694, westerly along Interstate Highway 694 to White Bear Avenue, southerly along White Bear Avenue to **State** Highway 36, westerly along **State** Highway 36 to Hazelwood Street, southerly along Hazelwood Street to a railroad right-of-way, westerly along the railroad right-of-way to **an extension of** Chamber Street, southerly along **the extension and** Chamber Street to Frost Avenue, westerly and southwesterly along Frost Avenue to the extension of said railroad right-of-way, southwesterly along the extension and the railroad right-of-way to Larpenteur Avenue, easterly along Larpenteur Avenue to Century Avenue, northerly along Century Avenue to Holloway Avenue and the southern boundary of the city of North St. Paul, westerly, northerly, and easterly along the boundaries of the city of North St. Paul to Century Avenue, and northerly along Century Avenue to the point of origin; and, that part of the city of St. Paul lying within a line described as follows: commencing at

the intersection of Larpenteur Avenue and Interstate Highway 35E, southerly along Interstate Highway 35E to Arlington Avenue, easterly along Arlington Avenue to Wheelock Parkway, easterly along Wheelock Parkway to Johnson Parkway, southerly along Johnson Parkway to Maryland Avenue, easterly along Maryland Avenue to Kennard Street, northerly along Kennard Street to Sherwood Avenue, easterly along Sherwood Avenue to White Bear Avenue, northerly along White Bear Avenue to Larpenteur Avenue, and westerly along Larpenteur Avenue to the point of origin; and, that portion of Washington County lying within a line described as follows: the intersection of the southerly shoreline of White Bear Lake with the boundary between Ramsey and Washington counties, **easterly and southerly** along the shoreline, its extension, **and the eastern boundary of the city of Birchwood Village to County Road 29, easterly** along **County Road 29** to **State Highway 244**, northeasterly along **State Highway 244** to **County Road 12, northeasterly and easterly along County Road 12 to** Ideal Avenue North, southerly along Ideal Avenue North to the boundaries of the city of Pine Springs, **westerly**, southerly, **westerly**, southerly, **westerly**, and southerly along the boundaries of the city of Pine Springs to Interstate Highway 694, westerly to the eastern boundary of Washington County, and northerly along the boundary to the point of origin.

Annotation: We again updated the annotation for State Highway 36 and, as done in senate district 54, used Chamber Street and its extension in the district boundary. Near Lake Phalen, extensions of Wheelock Parkway and of the lake's shoreline were deleted to eliminate the ambiguity arising from the lack of definite points of extension and to avoid the unnecessary splitting of a census block.

The description in Chapter 246 of the Washington County

boundary was incomplete and inaccurate, although the direction of the boundary was clear from the text, and its location was discernible from the large metro area map of Chapter 246. The new description merely clarifies the boundary as originally drawn. Changing the directions around Pine Springs from "easterly" and southerly to "westerly" and southerly similarly clarifies the otherwise ambiguous district boundary, which cannot move easterly along the boundary of Pine Springs when starting at Ideal Avenue North.

Subd. 2. HOUSE DISTRICTS. Senate district 55 is divided into two house districts as follows:

(a) House district 55A consists of that portion of senate district 55 not included in house district 55B.

(b) House district 55B consists of that portion of Ramsey County consisting of the city of North St. Paul and those portions of the cities of Maplewood and St. Paul included in senate district 55.

Annotation: By including the senate district 55 portion of Washington County in house district 55B, Chapter 246 created two house districts with population deviations exceeding 10% each. Shifting this area to house district 54A brings both districts well within constitutional limits and conforms to the districts as depicted in the metro area maps of Chapter 246.

Sec. 57. (2.593) FIFTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 56 consists of that portion of Washington County not included in senate district 51, 55, or 57.

Subd. 2. HOUSE DISTRICTS. Senate district 56 is divided into two house districts as follows:

(a) House district 56A consists of that portion of senate district 56 north of a line described as follows: commencing at the intersection of the western boundary of Washington County with the southern boundary of the city of Mahtomedi easterly and northeasterly along the southern boundary of the city of Mahtomedi to the western boundary of Grant Township, southerly along the western boundary of Grant Township to the southern boundary of Grant Township, easterly along the southern boundary of Grant Township to the western boundary of Baytown Township southerly along the western boundary of Baytown Township to the southern boundary of Baytown Township, easterly along the southern boundary of Baytown Township to the eastern boundary of senate district 56.

(b) House district 56B consists of that portion of senate district 56 not included in house district 56A.

Sec. 58. {2.603} FIFTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 57 consists of that portion of Ramsey County consisting of that portion of the city of Maplewood lying south of Larpenteur Avenue, and that portion of Washington County south and west of a line described as follows: commencing at the intersection of the western boundary of Washington County and the Chicago and Northwestern Transportation Company railroad tracks in the city of Oakdale, easterly along the Chicago and Northwestern Transportation Company railroad tracks to Interstate Highway 694, southerly along Interstate Highway 694 to Valley Creek Road, easterly along Valley Creek Road to Queens Drive, southerly along Queens Drive to Afton Road, southeasterly along Afton Road to Tower Drive, northerly along Tower Drive to Valley Creek Road, easterly along Valley Creek Road to Pioneer Drive, southerly along Pioneer Drive to Bailey Road, easterly along Bailey Road to

Woodbury Drive, southerly along Woodbury Drive to the southern boundary of the city of Woodbury, easterly along the southern boundary of Woodbury to the eastern boundary of the city of Cottage Grove southerly and westerly along the eastern and southern boundaries of Cottage Grove to the Mississippi River.

Subd. 2. HOUSE DISTRICTS. Senate district 57 is divided into two house districts as follows:

(a) House district 57A consists **of that portion of Ramsey County consisting of the portion of the city of Maplewood included in senate district 57 and that portion of Washington County consisting** of the city of Landfall and those portions of the cities of Oakdale and Woodbury included in senate district 57.

(b) House district 57B consists of that portion of senate district 57 not included in house district 57A.

Annotation: Chapter 246 included the Ramsey County portion of Maplewood contained in senate district 57 in house district 57A, with which it is not contiguous. Moving the Maplewood section to house district 57B corrects this constitutional defect and conforms the district composition to that illustrated in the metro area map of Chapter 246.

Sec. 59. {2.613} FIFTY-EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 58 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and Glenwood Avenue, easterly along Glenwood Avenue to the Burlington Northern railroad tracks, southeasterly and northeasterly along the Burlington Northern railroad tracks to Interstate Highway 94, southerly along Interstate Highway 94 to Interstate Highway 394, easterly along

Interstate Highway 394 to Hawthorne Avenue, northeasterly along Hawthorne Avenue to 9th Street North, southerly along 9th Street North to Hennepin Avenue, northeasterly along Hennepin Avenue to Washington Avenue North, northwesterly along Washington Avenue North to Plymouth Avenue North, easterly and northeasterly along Plymouth Avenue North to the Mississippi River, northwesterly along the Mississippi River to the northern boundary of the city of Minneapolis, westerly along the northern boundary of the city of Minneapolis to the western boundary of the city of Minneapolis, southerly along the western boundary of the city of Minneapolis to the point of origin.

Subd. 2. HOUSE DISTRICTS. Senate district 58 is divided into two house districts as follows:

(a) House district 58A consists of that portion of senate district 58 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and 21st Avenue North, easterly along 21st Avenue North to Upton Avenue North, northerly along Upton Avenue North to 24th Avenue North, easterly on 24th Avenue North to Sheridan Avenue North, northerly along Sheridan Avenue North to 26th Avenue North, easterly along 26th Avenue North to Penn Avenue North, northerly along Penn Avenue North to 29th Avenue North, easterly along 29th Avenue North to Humboldt Avenue North, northerly along Humboldt Avenue North to 30th Avenue North, easterly along 30th Avenue North to Dupont Avenue North, northerly along Dupont Avenue North to Lowry Avenue North, easterly along Lowry Avenue North to the eastern boundary of senate district 58.

(b) House district 58B consists of that portion of senate district 58 not included in house district 58A.

Annotation: Taking Lowry Avenue North easterly to the eastern boundary of senate district 58 splits a census block, but

because this is an unpopulated water block, the Chapter 246 boundary has been preserved.

Sec. 60. {2.623} FIFTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 59 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the Mississippi River and the northern boundary of the city of Minneapolis, easterly along the northern boundary of the city of Minneapolis to the eastern boundary of the city of Minneapolis, southerly along the eastern boundary of the city of Minneapolis to the Mississippi River, northwesterly along the Mississippi River to State Highway 122, southwesterly along State Highway 122 to Interstate Highway 35W, southwesterly along Interstate Highway 35W to 7th Street South, northwesterly along 7th Street South to 5th Avenue South, southwesterly along 5th Avenue South to 9th Street South, northwesterly along 9th Street South to the eastern boundary of senate district 58, northerly along the eastern boundary of senate district 58 to the point of origin.

Annotation: For clarification and accuracy, we substituted "State Highway 122," the road's new name, for "U.S. Highway 12."

Subd. 2 HOUSE DISTRICTS. Senate district 59 is divided into two house districts as follows:

(a) House district 59A consists of that portion of senate district 59 lying north of a line described as follows: commencing at the intersection of the Mississippi River and 8th Avenue Northeast, northeasterly along 8th Avenue Northeast to the east bank of the Mississippi River, southeasterly along the east bank of

the Mississippi River to **Hennepin Avenue, northeasterly along Hennepin Avenue to Main Street Northeast, northwesterly along Main Street Northeast to** 3rd Avenue Northeast, northeasterly along 3rd Avenue Northeast to 5th Street Northeast, northwesterly along 5th Street Northeast to Broadway Street Northeast, easterly along Broadway Street Northeast to Central Avenue Northeast, northerly along Central Avenue Northeast to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to Fillmore Street Northeast, northerly along Fillmore Street Northeast to 14th Avenue Northeast, easterly along 14th Avenue Northeast to Johnson Street Northeast, southerly along Johnson Street Northeast to Interstate Highway 35W, northeasterly and easterly along Interstate Highway 35W to the eastern boundary of the city of Minneapolis.

(b) House district 59B consists of that portion of senate district 59 not included in house district 59A.

Annotation: 3rd Avenue Northeast does not cross the Mississippi River and cannot be extended without splitting a populated census block. Slightly moving the boundary prevents any split and permits accurate calculation of the districts' populations. The change conforms to the metro area map of Chapter 246.

Sec. 61. {2.633} SIXTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 60 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and West 50th Street, easterly along West 50th Street to Penn Avenue South, northerly along Penn Avenue South to Lake Harriet Parkway, easterly and

northeasterly along Lake Harriet Parkway to West 46th Street, easterly along West 46th Street to Nicollet Avenue South, northerly along Nicollet Avenue South to West 36th Street, westerly along West 36th Street to Blaisdell Avenue South, northerly along Blaisdell Avenue South to West 34th Street, westerly along West 34th Street to Grand Avenue South, northerly along Grand Avenue South to West 32nd Street, westerly along West 32nd Street to Harriet Avenue South, northerly along Harriet Avenue South to West 31st Street, westerly along West 31st Street to Garfield Avenue South, northerly along Garfield Avenue South to West Lake Street, westerly along West Lake Street to Lyndale Avenue South, northerly along Lyndale Avenue South to Interstate Highway 94, easterly along Interstate Highway 94 and Interstate Highway 35W to the southern boundary of senate district 59, northwesterly along the southern boundary of senate district 59 to the southern boundary of senate district 58, westerly along the southern boundary of senate district 58 to the western boundary of the city of Minneapolis, southerly along the western boundary of the city of Minneapolis to the point of origin.

Subd. 2. HOUSE DISTRICTS. Senate district 60 is divided into two house districts as follows:

(a) House district 60A consists of that portion of senate district 60 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and West Lake Street, easterly along West Lake Street to the eastern boundary of senate district 60.

(b) House district 60B consists of that portion of senate district 60 not included in house district 60A.

Sec. 62. {2.643} SIXTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 61 consists of that portion of Hennepin County consisting of that

portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of Lyndale Avenue South and Interstate Highway 94, easterly and northeasterly along Interstate Highway 94 and Interstate Highway 35W to State Highway 122, easterly along State Highway 122 to Cedar Avenue South, southerly along Cedar Avenue South **to Minnehaha Avenue, southeasterly along Minnehaha Avenue to Cedar Avenue South, southwesterly and southerly along Cedar Avenue South** to Hiawatha Avenue, southerly along Hiawatha Avenue to East 28th Street, westerly along East 28th Street to 21st Avenue South, southerly along 21st Avenue South to East 32nd Street, westerly along East 32nd Street to 19th Avenue South, southerly along 19th Avenue South to East 34th Street, westerly along East 34th Street to Bloomington Avenue South, southerly along Bloomington Avenue South to East 36th Street, westerly along East 36th Street to 10th Avenue South, southerly along 10th Avenue South to East 38th Street, westerly along East 38th Street to Elliot Avenue South, southerly along Elliot Avenue South to East 44th Street, westerly along East 44th Street to Chicago Avenue South, southerly along Chicago Avenue South to East 50th Street, westerly along East 50th Street to Park Avenue South, southerly along Park Avenue South to East Minnehaha Parkway, westerly along East Minnehaha Parkway to East 50th Street, westerly along East 50th Street to Stevens Avenue South, northerly along Stevens Avenue South to East 46th Street, westerly along East 46th Street to the eastern boundary of senate district 60, northerly along the eastern boundary of senate district 60, to the point of origin.

Annotation: As in senate district 59, U.S. Highway 12 has been changed to State Highway 122. Cedar Avenue South turns into Minnehaha Avenue for about a block just south of

Interstate Highway 94, before turning southwesterly and eventually passing under Hiawatha Avenue. We added the necessary reference.

Subd. 2. HOUSE DISTRICTS. Senate district 61 is divided into two house districts as follows:

(a) House district 61A consists of that portion of senate district 61 lying north of a line described as follows: commencing at the intersection of the western boundary of senate district 61 and West 25th Street, easterly along West 25th Street to Pillsbury Avenue South, southerly along Pillsbury Avenue South to West 26th Street, easterly along West 26th Street to 1st Avenue South, southerly along 1st Avenue South to West Lake Street, easterly along West Lake Street **and East Lake Street** to the eastern boundary of senate district 61.

(b) House district 61B consists of that portion of senate district 61 not included in house district 61A.

Annotation: Lake Street changes from "West" to "East" before reaching the eastern boundary of the senate district.

Sec. 63. {2.653} SIXTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 62 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of State Highway 122 and Cedar Avenue South, northeasterly along State Highway 122 to the Mississippi River, southeasterly and southerly along the Mississippi River to the extension of East 54th Street, westerly along the extension of East 54th Street and East 54th Street to 40th Avenue South, southerly along 40th Avenue South to East 55th Street, easterly along East 55th Street to 41st Avenue South,

southerly along 41st Avenue South to East 56th Street, westerly along East 56th Street to 28th Avenue South, southerly along 28th Avenue South to East 58th Street, westerly along East 58th Street to **Longfellow Avenue South, northerly along Longfellow Avenue South to an extension of East 57th Street, westerly along the extension of East 57th Street to Cedar Avenue South, southerly along Cedar Avenue South to East 58th Street, westerly along East 58th Street** to 14th Avenue South, northerly along 14th Avenue South to East 54th Street, easterly along East 54th Street to Bloomington Avenue South, northerly along Bloomington Avenue South to East 48th Street, westerly along East 48th Street to the eastern boundary of senate district 61, northerly along the eastern boundary of senate district 61 to the point of origin.

Annotation: We again changed U.S. Highway 12 to State Highway 122. Because Chapter 246 unnecessarily split a populated census block with the extension of East 58th Street to 14th Avenue South, we altered the boundary slightly to conform it with Mn/DOT maps and census data.

Subd. 2. HOUSE DISTRICTS. Senate district 62 is divided into two house districts as follows:

(a) House district 62A consists of that portion of senate district 62 lying north of a line described as follows: commencing at the intersection of the western boundary of senate district 62 and East 36th Street, easterly along East 36th Street to Cedar Avenue South, southerly along Cedar Avenue South to East 38th Street, easterly along East 38th Street to Hiawatha Avenue, southeasterly along Hiawatha Avenue to East 42nd Street, easterly along East 42nd Street and its extension to the Mississippi River.

(b) House district 62B consists of that portion of senate

district 62 not included in house district 62A.

Sec. 64. {2.663} SIXTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 63 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis not contained in senate district 58, 59, 60, 61**, or 62**; that portion of the city of Richfield lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Richfield and West 67th Street, easterly along West 67th Street **and its extensions** to Interstate Highway 35W, southerly along Interstate Highway 35W to West 73rd Street, easterly along West 73rd Street to 2nd Avenue South, southerly along 2nd Avenue South to the southern boundary of the city of Richfield, easterly along the southern boundary of the city of Richfield to the eastern boundary of the city of Richfield; the unorganized territory of Fort Snelling; and the Minneapolis-Saint Paul International Airport.

Annotation: Chapter 246 placed the portion of Minneapolis not contained in senate districts 57, 58, 59, 60, and 61 in senate district 63. Because senate district 57 does not contain any portion of the city, this superfluous reference was deleted. Senate district 62 was also added to the list to prevent a double assignment. This addition creates minimal population deviations and effectuates the legislature's apparent intent to make senate district 63 the residual district for Minneapolis. In the Richfield segment of the district boundary, references to the extensions of West 67th Street are required to complete the boundary line as it passes through a park near James and Irving Avenues and as it approaches Interstate Highway 35W.

Subd. 2. HOUSE DISTRICTS. Senate district 63 is divided into two house districts as follows:

(a) House district 63A consists of that portion of senate district 63 north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and State Highway 62, easterly along State Highway 62 to Lyndale Avenue South, northerly along Lyndale Avenue South to West 58th Street, easterly along West 58th Street and East 58th Street and its extension to Interstate Highway 35W, southerly along Interstate Highway 35W to East 60th Street, easterly along East 60th Street to Portland Avenue South, northerly along Portland Avenue South to East 57th Street, southeasterly along East 57th Street to Chicago Avenue South, southerly along Chicago Avenue South to East 58th Street, easterly along East 58th Street to the western boundary of senate district 62.

(b) House district 63B consists of that portion of senate district 63 not included in house district 63A.

Annotation: The only change in the house districts clarifies the boundary West 58th Street and Interstate Highway 35W.

Sec. 65. {2.673} SIXTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 64 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the western boundary of the city of St. Paul and the southern boundary of senate district 66, easterly along the southern boundary of senate district 66 to Hamline Avenue, southerly along Hamline Avenue to Ayd Mill Road southeasterly along Ayd Mill Road to Summit Avenue, easterly along Summit Avenue to Griggs Street, northerly along Griggs Street to Portland Avenue, easterly along Portland Avenue to Victoria Street, southerly along Victoria Street to Portland

Avenue, easterly along Portland Avenue to Dale Street, southerly along Dale Street to Summit Avenue, easterly and northeasterly along Summit Avenue to Western Avenue, southerly along Western Avenue and its extension to Ramsey Street, easterly along Ramsey Street and Grand Avenue to Interstate Highway 35E, southwesterly along Interstate Highway 35E to St. Clair Avenue, westerly along St. Clair Avenue to an extension of Victoria Street, southerly along the extension and Victoria Street to Jefferson Avenue, westerly along Jefferson Avenue to Interstate Highway 35E, southerly along Interstate Highway 35E to the southern boundary of the city of St. Paul, southwesterly, northerly, westerly, and northwesterly along the southern boundary of the city of St. Paul to the western boundary of the city of St. Paul, northerly along the western boundary of the city of St. Paul to the point of origin.

Annotation: A park lying south of St. Clair Avenue prevents the boundary line from turning south on Victoria "Street;" we added an extension of Victoria and clarified the street name. Because Victoria Street interrupts Portland Avenue, we also inserted a reference to Victoria to preserve the boundary's continuity. No other changes in this otherwise unambiguous boundary are justified.

Subd. 2. HOUSE DISTRICTS. Senate district 64 is divided into two house districts as follows:

(a) House district 64A consists of that portion of senate district 64 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of St. Paul and the extension of St. Clair Avenue, easterly along the extension of St. Clair Avenue and St. Clair Avenue to Snelling Avenue, southerly along Snelling Avenue to Jefferson Avenue, easterly

along Jefferson Avenue to Lexington Parkway, northerly along Lexington Parkway to the Soo Line railroad tracks, easterly along the Soo Line railroad tracks to the eastern boundary of senate district 64.

(b) House district 64B consists of that portion of senate district 64 not included in house district 64A.

Annotation: Chapter 246 mistakenly refers to senate district "64B," which does not exist. The deletion corrects the error.

Sec. 66. {2.683} SIXTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 65 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the southern boundary of the city of St. Paul and the eastern boundary of senate district 64, northerly, easterly, northerly, and northeasterly along the eastern boundary of senate district 64 to Grand Avenue, westerly along Grand Avenue and Ramsey Street to the extension of Western Avenue, northerly along the extension of Western Avenue and Western Avenue to Summit Avenue, southwesterly and westerly along Summit Avenue to Dale Street, northerly along Dale Street to Portland Avenue, westerly along Portland Avenue **to Victoria Street, northerly along Victoria Street to Portland Avenue, westerly along Portland Avenue** to Griggs Street, southerly along Griggs Street to Summit Avenue, westerly along Summit Avenue to Ayd Mill Road, northwesterly along Ayd Mill Road to Hamline Avenue, northerly along Hamline Avenue to Charles Avenue, easterly along Charles Avenue to Lexington Parkway, northerly along Lexington Parkway to Minnehaha Avenue, easterly along Minnehaha Avenue to Dale Street, northerly

along Dale Street to the Burlington Northern railroad tracks, easterly along the Burlington Northern railroad tracks past Interstate Highway 35E to the north-south Burlington Northern railroad tracks, southeasterly along the north-south Burlington Northern railroad tracks **to an** extension **of Clermont Street, southwesterly along the extension of Clermont Street** to the Mississippi River, southerly along the Mississippi River to the southern boundary of the city of St. Paul, westerly and southwesterly along the southern boundary of the city of St. Paul to the point of origin.

Annotation: The reference to Victoria Street in senate district 64 is also added in this district, which shares the same boundary.

Subd. 2. HOUSE DISTRICTS. Senate district 65 is divided into two house districts as follows:

(a) House district 65A consists of that portion of senate district 65 lying west of a line described as follows: commencing at the intersection of the northern boundary of senate district 65 and Rice Street, southerly along Rice Street to John Ireland Boulevard, southwesterly along John Ireland Boulevard to Summit Avenue, southwesterly along Summit Avenue to the southern boundary of senate district 65.

(b) House district 65B consists of that portion of senate district 65 not included in house district 65A.

Sec. 67. {2.693} SIXTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 66 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the western boundary of the city of St. Paul with the northern boundary of the city of St.

Paul, easterly along the northern boundary of the city of St. Paul to Interstate Highway 35E, southerly along Interstate Highway 35E to Arlington Avenue, easterly and southeasterly along Arlington Avenue and Wheelock Parkway **to Johnson Parkway, southeasterly along Johnson Parkway** to Maryland Avenue, westerly along Maryland Avenue to Edgerton Street, southerly along Edgerton Street to Cook Avenue, westerly along Cook Avenue to DeSoto Street, southerly along DeSoto Street to Case Avenue, westerly along Case Avenue and its extension to Interstate Highway 35E, southerly along Interstate Highway 35E to the **east-west** Burlington Northern railroad tracks, westerly along the **east-west** Burlington Northern railroad tracks to Dale Street, southerly along Dale Street to Minnehaha Avenue, westerly along Minnehaha Avenue to Lexington Parkway, southerly along Lexington Parkway to Charles Avenue, westerly along Charles Avenue to Hamline Avenue, southerly along Hamline Avenue to Interstate Highway 94, westerly along Interstate Highway 94 to the western boundary of the city of St. Paul, northerly along the western boundary of the city of St. Paul to the point of origin.

Annotation: Because Wheelock Parkway does not intersect with Maryland Avenue, the Johnson Parkway connection was required to continue the boundary line and to conform this description with that of the same boundary in senate district 55. The "east-west" description clarifies which of the two Burlington Northern tracks in the area is to be followed westerly to Dale Street.

Subd. 2. HOUSE DISTRICTS. Senate district 66 is divided into two house districts as follows:

(a) House district 66A consists of that portion of senate **district** 66 lying east of a line described as follows: commencing

at the intersection of the northern boundary of the city of St. Paul with Grotto Street, southerly along Grotto Street to Arlington Avenue, westerly along Arlington Avenue to Lexington Parkway, southerly along Lexington Parkway to East Como Lake **Drive**, southerly along East Como Lake **Drive** to **East Como Boulevard**, southerly along **East Como Boulevard and Como Avenue** to the Burlington Northern railroad tracks, westerly along the Burlington Northern railroad tracks to Chatsworth Street, southerly along Chatsworth Street to Front Avenue, easterly along Front Avenue to Western Avenue, southerly along Western Avenue to the southern boundary of senate district 66.

(b) House district 66B consists of that portion of senate district 66 not included in house district 66A.

Annotation: "District" replaces "portion," a typographical error. The boundary near Lake Como is also clarified in conformity with Mn/DOT and census annotations.

Sec. 68. {2.703} SIXTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 67 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the southern boundary of the city of St. Paul with the eastern boundary of senate district 65, northerly and northwesterly along the eastern boundary of senate district 65 to the northern boundary of senate district 65, westerly along the northern boundary of senate district 65 to the eastern boundary of senate district 66, northerly and easterly along the eastern boundary of senate district 66 to Maryland Avenue, easterly along Maryland Avenue to Kennard Street, northerly along Kennard Street to Sherwood Avenue, easterly along Sherwood Avenue to White Bear Avenue, northerly along White Bear

Avenue to the northern boundary of the city of St. Paul, easterly along the northern boundary of the city of St. Paul to the eastern boundary of the city of St. Paul, southerly along the eastern boundary of the city of St. Paul to the southern boundary of the city of St. Paul, westerly and northwesterly along the southern boundary of the city of St. Paul to the point of origin.

Subd. 2. HOUSE DISTRICTS. Senate district 67 is divided into two house districts as follows:

(a) House district 67A consists of that portion of senate district 67 lying north of a line described as follows: commencing at the intersection of the eastern boundary of senate district 67 with Old Hudson Road, westerly along Old Hudson Road to Ruth Street, northerly along Ruth Street to Minnehaha Avenue, **westerly** along Minnehaha Avenue to Frank Street, northerly along Frank Street to East Seventh Street, **westerly** along East Seventh Street to Earl Street, northerly along Earl Street to the Burlington Northern railroad tracks, **westerly** along the Burlington Northern railroad tracks to the **western** boundary of senate district 67.

(b) House district 67B consists of that portion of senate district 67 not included in house district 67A.

Annotation: In two places, Chapter 246 describes the house districts' boundary as moving westerly where it must move easterly to reach the next referenced street. The original boundary also followed the Burlington Northern tracks easterly to the eastern boundary of the senate district. Although this is possible, the area described was not a horizontal line. The area "north" of this line that was intended to comprise house district 67A was, therefore, not clearly ascertainable. Substituting "westerly" and "western," clarifies the boundary and the contents of the districts, which possess adequate population deviations and which mirror the districts illustrated in the metro area maps of Chapter 246.

Sec. 69. {2.713} CONTROLLING DESCRIPTION.

If a territory in this state is not named in sections 2 to 68, but (1) lies within the boundaries of a legislative district, or (2) lies between the boundaries of two or more legislative districts, for the purposes of sections 2 to 68, the territory referred to in clause (1) shall be a part of the legislative district within which it lies, and the territory referred to in clause (2) shall be a part of the contiguous legislative district having the smallest population.

If a territory in this state is within the boundaries of two or more legislative districts, for the purposes of sections 2 to 68, the territory shall be a part of the contiguous legislative district having the smallest population.

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situation,

Plaintiffs,

and

John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

ORDER FOR ENTRY OF JUDGMENT

Joan Growe, Secretary of State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors.

On December 9, 1991, this court issued an order for judgment on legislative redistricting subject to the stay of the federal district court in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991). That stay has been vacated by the United States Supreme Court, Cotlow v. Emison, No. 91-1084 (January 10, 1992).

As provided in the December 9, 1991, Findings of Fact, Conclusions of Law, and Order for Judgment, there is no just reason for delay and the court administrator is ordered to enter immediately the judgment of this court effective January 30, 1992.[1] Pursuant to Minn. R. Civ. P. 77.04, the administrator shall notify the parties that judgment has been entered.

IT IS SO ORDERED.

Dated: January 30, 1992. BY THE COURT:

/s/
Honorable Harriet Lansing
Honorable Kenneth J. Maas
Honorable William E. Walker

JUDGMENT

I hereby certify that the above Order for Entry of Judgment constitutes the Judgment of the Court.

Dated: January 30, 1992

Frederick Grittner
Supreme Court Administrator

/s/

---

[1] Minn. Gen. R. Prac. 125, which imposes an automatic stay of the entry of judgment for thirty days unless otherwise ordered by the court, effective January 1, 1992, does not apply to this order.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situation,	Alan W. Weinblatt
Plaintiffs,	
and	
John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,	Bruce D. Willis
Plaintiff-Intervenors,	
vs.	
Joan Growe, Secretary of State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,	John R. Tunheim Michael O. Freeman
Defendants,	
and	
The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota	John French Michael L. Cheever

State Senate,	Peter Wattson
Defendant-Intervenors.	

NOTICE OF ENTRY OF JUDGMENT

YOU ARE HEREBY NOTIFIED That an Order for Entry of Judgment and Judgment in the above entitled cause was, on January 30, 1992 entered in the office of the Court Administrator of the Minnesota Supreme Court.

Frederick Grittner
Supreme Court Administrator

/s/

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situation,

Plaintiffs,

and

John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Growe, Secretary of State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

PROCEDURAL ORDER NO. 6

Defendant-Intervenors.

To address motions pending before this panel, a hearing has been scheduled for February 17, 1992, at 1:30 p.m., in the Minnesota Judicial Center, Courtroom 200. Parties should be prepared to present argument on (1) plaintiffs' motions to adopt the congressional redistricting plan passed by the legislature but not enacted into law and to set an expedited time schedule, and (2) plaintiff-intervenors' objection to this court's review of the existing congressional redistricting plan. The parties should also be prepared to report on the status of congressional redistricting proceedings in Emison v. Growe, No. 4-91-202 (D. Minn.).

The panel may also inquire into the following areas:

(a) Are there any significant and specific issues of state law or policy which would weigh in favor of state court review of congressional redistricting?

(2) What deference, if any, short of actual adoption should be given to the congressional plan passed by the legislature but vetoed by the governor?

(3) What is the scope of the court's authority (generally, no necessarily on the particular facts of this case) to order a plan independent of those submitted? Must the submitted plans be constitutionally "defective," or can the court simply find its plan to be "better"?

(4) What is the latest date a congressional plan can be adopted? What are the practical concerns of the parties?

As requested, the panel has received the parties' congressional redistricting proposals. To aid the panel's analysis of these plans, should such analysis be necessary, the panel requests submission of the computer plan files of each proposal. Although not part of

the original criteria for redistricting, written descriptions of all plans should also be received as soon as possible and not later than February 28, 1992.

IT IS SO ORDERED.

Dated: February 6, 1992 BY THE COURT:

/s/
Honorable Harriet Lansing
Honorable Kenneth J. Maas
Honorable William E. Walker

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: APPORTIONMENT LITIGATION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

Civil No. 4-91-202

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

The Seventy-seventh Minnesota State House of Representatives; the Seventy-seventh Minnesota State Senate; and Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Intervening Defendants.

and

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

The Seventy-seventy Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Applicants for Intervention as Defendants,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County

Civil No. 4-91-603

Auditors of the State of Minnesota,

Intervening Defendant.

Notice is hereby given that Joan Growe, Secretary of the State of Minnesota, Defendant; the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate, Intervening Defendants; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota, Intervening Defendant; and Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, Intervening Plaintiffs, all hereby appeal to the Supreme Court of the United States from the judgment entered in this action on February 19, 1992, and from the permanent injunction granted pursuant to said judgment. The injunction requires the Secretary of State and all those acting by and under her authority to accept filings and conduct elections only in accordance with the provisions of the three-judge panel's order reapportioning Minnesota's state legislative and congressional districts.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: February 25, 1992 Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

By: /s/
JOHN R. TUNHEIM
Chief Deputy Attorney General
JOCELYN F. OLSON
Assistant Attorney General
102 State Capitol
St. Paul, MN 55155
(612) 296-6196

MICHAEL O. FREEMAN
Hennepin County Attorney

By: /s/
MICHAEL O. FREEMAN
Hennepin County Attorney
KERRY W. MEYER
C-2000 Government Center
Minneapolis, MN 55487
(612) 348-5550

ATTORNEYS FOR DEFENDANT JOAN GROWE, SECRETARY OF STATE, STATE OF MINNESOTA

FAEGRE & BENSON

By:_____/s/_____
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Senate Counsel & Research
G-17 State Capitol
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(612) 296-3812

ATTORNEYS FOR THE SEVENTY-SEVENTH MINNESOTA STATE HOUSE OF REPRESENTATIVES AND THE SEVENTY-SEVENTH MINNESOTA STATE SENATE

ATTORNEYS FOR DEFENDANT PATRICK O'CONNOR, HENNEPIN COUNTY AUDITOR, INDIVIDIAULLY AND ON BEHALF OF ALL COUNTY AUDITORS OF THE STATE OF MINNESOTA

WEINBLATT AND DAVIS

By:_____/s/_____
ALAN W. WEINBLATT
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101
(612) 292-8770

ATTORNEYS FOR INTERVENING ATTORNEYS PATRICIA COTLOW, PHILLIP KRASS, SHARON LACOMB, JAMES STEIN AND THEODORE SUSS

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Minneapolis Branch • Post Office Box 8237 • Minneapolis, Minnesota 55408 • (612) 822-8205

October 15, 1991

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

c/o Clerk of Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Dear Judges Lansing, Maas, and Walker:

As the 1st Vice President and Chair of the Political Action Committee for the Minneapolis and the Minnesota/ Dakotas State Conference of the National Association For The Advancement of Colored People (NAACP), I am writing you regarding Cotlow v. Growe, File No. C3-91-985.

It is the NAACP's understanding that the Appellate Court is presently considering the adoption of a legislative redistricting plan for Minnesota.

The Minnesota/Dakotas State Conference and the Minneapolis Branch of the NAACP has had an opportunity to review and discuss the legislative redistricting plans which have been submitted to the Courts by the Legislature and by the intervening

plaintiffs.

As Chair of the Political Action Committee for both the State and Minneapolis Chapters of the NAACP, I led the discussion regarding these plans with particular focus given to the districts in Minneapolis and St. Paul, which as you may know, encompass substantial populations of "People of Color". Moreover, I discussed other jurisdictions such as St. Cloud, Duluth, Rochester, Willmar, Bemidji etc., with the above mentioned committee.

On Saturday, October 12, 1991 the Minnesota/Dakota State Conference held it's Annual Statewide meeting.

NAACP representatives from every branch in Minnesota were in attendance. After a thorough review the group voted unanimously to endorse the Legislature's Plan.

It is our belief and feeling that this plan provides the greatest opportunity for "People of Color" to be elected during the upcoming decade. Furthermore, we realize that we will be "locked out or locked in" for the balance of the century. We urge the court to adopt the legislative redistricting plan proposed by the Legislature.

Sincerely,

/s/

William J. Davis,
1st Vice President and Chair,
Political Action Committee - NAACP

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Minneapolis Branch • Post Office Box 8237 •
Minneapolis, Minnesota 55408 • (612) 822-8205

December 5, 1991

Honorable Donald P. Lay, Chief Judge
Eighth U.S. Circuit Court of Appeals
Federal Building
316 North Robert Street
St. Paul, MN 55101

Dear Judge Lay:

I am writing you on behalf of the National Association For The Advancement of Colored People (NAACP) regarding Emison vs Growe Court File #4-91-202.

I presently serve as the First Vice President and Chair of the Political Action Committee for the Minneapolis and the Minnesota/Dakota State Conference for the NAACP.

It is my understanding that the Eighth Circuit Court of Appeals is currently considering the adoption of the Legislative Redistricting Plan for Minnesota.

The Minnesota/Dakota State Conference and the Minneapolis Branch of the NAACP membership has had an opportunity to review and discuss both Redistricting Plan submitted to the Courts (the legislative and the intervening plaintiff version).

As Chair of the Political Action Committee for both the State and the Minneapolis Chapter of the NAACP, I Chaired the meeting and led the discussions regarding these plans. Because of the large

number of "people of color" in the legislative districts of Minneapolis and St. Paul we carefully studied the various options. Additionally, other jurisdictions such as St. Cloud, Duluth, Rochester, Wilmar, Bemidji etc. were also reviewed and discussed.

On Saturday, October 12, 1991, the Minnesota/Dakota State Conference membership unanimously voted to support the Legislative Redistricting Plan. And, on Sunday, October 20, 1991 the Minneapolis Branch also voted unanimously to support the Legislative Redistricting Plan.

The NAACP strongly urges the court at this time to adopt the Legislative Redistricting Plan proposed by the Legislature. It is our belief that this plan provides the greatest opportunity for "people of color" to be elected during the upcoming decade.

And finally, we clearly understand the importance of redistricting and the impact it will have on the communities of color for the balance of this century. Again, we urge your support and adoption of the Legislative Redistricting Plan.

We wish to thank you in advance for your consideration of this important voter/civil rights issue.

Sincerely,

/s/
William J. Davis,
First Vice President and Chair
Political Action Committee, NAACP

cc: U.S. District Judge Paul Magnuson
U.S. District Judge Harry McLaughlin
Lewis Freeman, Presient, Minnesota/Dakota State Conference
Matthew Little, President, Minneapolis Branch NAACP
Dennis Hayes, General Counsel, National NAACP

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (612) 296-6196
FACSIMILE: (612) 297-1193

January 31, 1992

Dear Local Election Official:

As you are well aware, Minnesota law requires local election districts to be redistricted within a specified number of days "after the legislature has been redistricted." Minn. Stat. §§ 204B.135 and 204B.14 (Supp. 1991) provide that city wards and precinct boundaries must be redistricted within sixty days and Minn. Stat. § 204B.135, subd.2 (Supp. 1991) mandates all other local government election districts to be redistricted within eighty days. These time requirements have been the subject of several injunctions in the cases that have been brought involving redistricting.

The special state court redistricting panel in *Cotlow v. Growe* issued an order for judgment on December 9 establishing a final legislative redistricting plan. This plan was stopped by the federal court redistricting panel in *Emison v. Growe* on December 5, but the federal order was subsequently vacated by the United States Supreme Court on January 10, which reinstated the state panel's order. On January 30, 1992, the state redistricting panel signed an order entering the judgment, thus establishing the state court plan as the redistricting plan for the legislature. At this time, there are

no injunctions in place which would stop enforcement of this plan.

In our view, the legislature, "has been redistricted" and thus the time deadline for redrawing local election districts started, effective January 30, 1992. We recognize that the possibility exists that the state court judgment will be appealed, and there is a ninety day window for appeal. In addition, the federal panel may attempt to further review the state court plan, although we do not believe there is a legal basis to do so. Nevertheless, we believe that local districts should proceed with redrawing local boundaries in an expeditious manner. If there are further court orders which halt the process, we will as advise you as well as keep you informed of any new developments.

To summarize, city wards and precinct boundaries must be redrawn by March 30, 1992; all other election districts by April 20, 1992. It is important to achieve finality in this process as soon as possible so that the new lines are drawn well in advance of the 1992 primary and general election. Please feel free to contact us if you have any questions.

Sincerely,

/s/
MICHAEL O. FREEMAN
Hennepin County
Attorney
(612) 348-3099

Attorney for Hennepin
County Auditor

/s/
JOHN R. TUNHEIM
Chief Deputy Attorney
General
(612) 296-2351

Attorney for Minnesota
Secretary of State
Joan Growe

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

The Minnesota Constitution, article IV, section 2, provides:

The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.

The Minnesota Constitution, article IV, section 3, provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. Senators shall be chosen by single districts of convenient contiguous territory. No representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1738 provides in pertinent part:

The records and judicial proceedings in any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

42 U.S.C. § 1973 provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent

to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Minnesota Statutes, section 204B.14, subdivision 1a, provides:

It is the intention of the legislature to complete congressional and legislative redistricting activities in time to permit counties and municipalities to begin the process of reestablishing precinct boundaries as soon as possible after the adoption of the congressional and legislative redistricting plans but in no case later than 25 weeks before the state primary election in the year ending in two.

LEGISLATIVE RESOLUTIONS INVOLVED

House Concurrent Resolution No. 1 of the Seventy-seventh Minnesota State Legislature provides:

A plan presented to the Senate or House of Representatives for redistricting seats in the United States House of Representatives must adhere to the following standards:

(1) There must be eight districts, each entitled to elect a single member.

(2) The districts must be as nearly equal in population as practicable.

(3) The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

(4) The districts must be numbered in a regular series, beginning with congressional district 1 in the southeast corner of the state and ending with district 8 in the northeast corner of the state.

(5) The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority population makes it possible, the districts must increase the probability that members of the minority will be elected.

(6) A county, city, or town must not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contig-

uous territory.
(7) The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards.
(8) The geographic areas and population counts used in maps, tables, and legal descriptions of the districts must be those used by the Legislative Coordinating Commission's Subcommittee on Redistricting.

The Subcommittee on Redistricting will notify the President of the Senate and the Speaker of the House of Representatives when the necessary 1990 census data has been received from the United States Census Bureau, loaded into the Subcommittee's computerized redistricting system, and verified as ready for use in redistricting. A redistricting plan will not be considered for adoption by the Senate or House of Representatives until the notice has been given.

House Concurrent Resolution No. 2 of the Seventy-seventh Minnesota State Legislature provides:

A plan presented to the Senate or House of Representatives for redistricting seats in the Senate and House of Representatives must adhere to the following standards:

(1) The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

(2) Each district is entitled to elect a single member.

(3) A representative district may not be divided in the formation of a senate district.

(4) The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent, plus or minus.

(5) The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

(6) The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

(7) The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected.

(8) A county, city, or town should not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory.

(9) The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards.

(10) The geographic areas and population counts used in maps, tables, and legal descriptions of the districts must be those used by the Legislative Coordinating Commission's Subcommittee on Redistricting.

The Subcommittee on Redistricting will notify the President of the Senate and the Speaker of the House of Representatives when the necessary 1990 census data has been received from the United States Census Bureau, loaded into the Subcommittee's computerized redistricting system, and verified as ready for use in redistricting. A redistricting plan will not be considered for adoption by the Senate or House of Representatives until the notice has been given.

TABLE 1

The starting point for drawing the plan which evolved into Chapter 246 was the group of districts identified as having significant minority populations--three House districts in Minneapolis, Districts 58B, 61A and 61B, one Senate district in Minneapolis, District 61, one House district in St. Paul, 65A, and the House district encompassing the White Earth and Red Lake Indian Reservations, District 2B. The districts ultimately enacted in Chapter 246 have total minority populations as follows:

District	Black	Indian	Asian	Hispanic	Total Minority
61	29%	9%	7%	3%	48%
2B	0%	21%	0%	0%	21%
58B	47%	4%	11%	2%	64%
61A	20%	14%	8%	3%	45%
61B	37%	5%	6%	3%	51%
65A	32%	2%	14%	4%	52%

TABLE 2

Minority Districts - Minneapolis

District 58

	State Court	Federal Court
Total Minority Voting Age Population %	31.3	8.4
Black Voting Age Population %	23	4
Indian Voting Age Population %	2	2

District 59

	Federal Court
Total Minority Voting Age Population %	49.8
Black Voting Age Population %	37
Indian Voting Age Population %	4

District 61

	State Court	Federal Court
Total Minority Voting Age Population %	39.1	20.7
Black Voting Age Population %	24	7
Indian Voting Age Population %	7	5

TABLE 3

Legislative Plan Comparison

3-1. Population Equality[1]

	State Court	*Federal Court*
SENATE		
Overall Range	3.42%	1.19%
Mean Deviation	.69%	.15%
HOUSE		
Overall Range	5.90%	1.40%
Mean Deviation	.96%	.19%

---

1 *See Board of Estimate v. Morris*, 109 S.Ct. 1433, 1442 (1989); *Brown v. Thomson*, 462 U.S. 835, 843-46 (1983); *Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983); *Connor v. Finch*, 431 U.S. 407 (1977); *Gaffney v. Cummings*, 412 U.S. 735 (1973); *White v. Regester*, 412 U.S. 755 (1973).

Table 3 continued

3-2. **Minority Districts**[2]

	State Court	*Federal Court*
SENATE		
Districts over 30% minority Voting Age Population	3	2
Largest minority Voting Age Population %	39.1	49.8
Largest Black Voting Age Population %	24	37
Largest Indian Voting Age Population %	9	11
Largest Asian Voting Age Population %	7	8
Largest Hispanic Voting Age Population %	7	7

---

2 *See Thornburg v. Gingles*, 478 U.S. 30 (1986); *MacNeil v. Springfield Park Dist.*, 851 F.2d 937 (7th Cir. 1988); *Quilter v. Voinovich*, No. 91CV-2219, 1992 WL _____ (N.D. Ohio Jan. 31, 1992); *Turner v. Arkansas*, No. LR-C-91-295, 1991 WL 316875, *9-24 (E.D. Ark. Nov. 15, 1991); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 634, 645-55 (N.D. Ill. 1991); *Armour v. Ohio*, 775 F. Supp. 1044 (N.D. Ohio 1991); *Wilson v. Eu*, No. S022835, 1992 WL 12071, *3-6, *8-13 (Cal. Jan. 27, 1992).

HOUSE		
Districts over 35% minority Voting Age Population	4	3
Largest minority Voting Age Population %	55.0	54.9
Largest Black Voting Age Population %	42	42
Largest Indian Voting Age Population %	17	14
Largest Asian Voting Age Population %	9	9
Largest Hispanic Voting Age Population %	10	11

Table 3 continued

3-3. Political Subdivisions Split[3]

	State Court	*Federal Court*
Counties	62	65
Cities	50	46
Towns	9	12
Unorganized Territories	3	0
Precincts	172	201

3-4. Compactness[4]

	State Court	*Federal Court*
Perimeter-Length in Miles (shorter is better)		
Senate	9,909	10,316
House	13,331	13,286
Polsby-Popper Test (higher is better)		
Senate	.404	.398
House	.415	.441

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3 *See Brown v. Thomson*, 462 U.S. 835, 843-46 (1983); *Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983); *Mahan v. Howell*, 410 U.S. 315 (1973).

4 *See Stone v. Hechler*, No. 91-0110-E, 1992 WL 14671 (N.D. W. Va. Jan. 7, 1992), and Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 YALE L. & POL. REV. 301 (1991), for an explanation and critique of these measurements. *See also Karcher v. Daggett*, 462 U.S. 725, 756 n.19 (Stevens, J., concurring) (1983); Minnesota Constitution, Art. 4, § 3; *Wilson v. Eu*, No. S022835, 1992 WL 12071, *7 (Cal. Jan. 27, 1992); *Jamerson v. Womack*, No. HB-880 (Cir.Ct. of Richmond, Va. Jan. 8, 1992); *In re Legislative Districting*, 299 Md. 658, 475 A.2d 428 and cases cited therein at 436-40 (1982).

Table 3 continued

3-5. Incumbents Paired[5]

	State Court	*Federal Court*
Senate		
DFL	5	7
IR	3	10
House		
DFL	12	31
IR	12	24

3-6. Packing[6]

	State Court	*Federal Court*
Senate		
Over 60% DFL[7]	15	14
Over 60% IR[7]	3	3
House		
Over 60% DFL[7]	33	31
Over 60% IR[7]	10	8

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5 *See Illinois Legislative Districting Comm'n v. LaPaille*, No. 91-C-6318, 1992 WL 13882, *3 (N.D. Ill. Jan. 24, 1992); *Republican Party v. Wilder*, 774 F. Supp. 400 (W.D. Va. 1991).

6 *See Davis v. Bandemer*, 478 U.S. 109, 117 n.6 (1986); *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 639, 646-47 (N.D. Ill. 1991).

7 Dukakis-Bush 1988 presidential race, used by appellees as their base line race.

Table 3 continued

3-7. Proportional Representation[8]

	Simple Majority	*Base Line*[9]	*State Court*	*Federal Court*
Senate DFL	34	36	40	37
House DFL	68	71	75	77

[8] *See Davis v. Bandemer*, 478 U.S. 109, 130-43 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 634, 655-59 (N.D. Ill. 1991).

[9] 53.6% Dukakis statewide, 1988.

TABLE 4

Congressional Plan Comparison

4-1. Population Equality[1]

	SF 1597	*Federal Court*
Overall Range	1 person	1 person

4-2. Political Subdivisions Split[2]

	SF 1597	*Federal Court*
Counties	10	8
Cities	13	23
Towns	5	2
Unorganized Territories	0	0
Precincts	16	16

[1] *See Karcher v. Daggett*, 462 U.S. 725 (1983).

[2] *See Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983).

Table 4 continued

4-3. Compactness[3]

	SF 1597	*Federal Court*
Perimeter-Length in Miles (shorter is better)	4,093	4,006
Polsby-Popper Test (higher is better)	.355	.346

4-4. Incumbents Paired[4]

	SF 1597	*Federal Court*
DFL	0	0
IR	0	0

[3] *See Stone v. Hechler*, No. 91-0110-E, 1992 WL 14671 (N.D. W. Va. Jan. 7, 1992), and Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 YALE L. & POL. REV. 301 (1991), for an explanation and critique of these measurements. *See also Karcher v. Daggett*, 462 U.S. 725, 756 n.19 (Stevens, J., concurring) (1983); Minnesota Constitution, Art. 4, § 3; *Wilson v. Eu*, No. S022835, 1992 WL 12071, *7 (Cal. Jan. 27, 1992); *Jamerson v. Womack*, No. HB-880 (Cir.Ct. of Richmond, Va. Jan. 8, 1992); *In re Legislative Districting*, 299 Md. 658, 475 A.2d 428 and cases cited therein at 436-40 (1982).

[4] *See Illinois Legislative Districting Comm'n v. LaPaille*, No. 91-C-6318, 1992 WL 13882, *3 (N.D. Ill. Jan. 24, 1992); *Republican Party v. Wilder*, 774 F. Supp. 400 (W.D. Va. 1991).

Table 4 continued

4-5. Packing[5]

	SF 1597	*Federal Court*
Over 60% DFL[6]	2	2
Over 60% IR[6]	0	0

4-6. Proportional Representation[7]

	Incumbents	*Base Line[8]*	*SF 1597*	*Federal Court*
DFL	6	4	4	4
IR	2	4	4	4

[5] *See Davis v. Bandemer*, 478 U.S. 109, 117 n.6 (1986); *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 639, 646-47 (N.D. Ill. 1991).

[6] Dukakis-Bush 1988 presidential race, used by appellees as their base line race.

[7] *See Davis v. Bandemer*, 478 U.S. 109, 130-43 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 634, 655-59 (N.D. Ill. 1991).

[8] 53.6% Dukakis statewide, 1988.

TABLE 5

Parallel Redistricting Proceedings

State Court	Federal Court
Cotlow v. Growe, No. C8-91-985 (Minn. Spec. Redis. Panel, filed Jan. 24, 1991)	*Emison v. Growe*, No. 4-91-202 (D. Minn., filed Mar. 18, 1991) *order vacated sub nom. Cotlow v. Emison*, No. 91-1084 (U.S. Jan. 10, 1992) *Benson v. Growe*, No. 4-91-603 (D. Minn., filed Aug. 9, 1991) (consol. with *Emison*)
Mena v. Richards, No. C-454-91-F (332nd Jud. Dist., Hidalgo Co., Tex., filed June 17, 1991)	*Terrazas v. Slagle*, No. A-91-CA426 (W.D. Tex.) (on appeal to this Court as *Richards v. Terrazas*, No. 91-1270, docketed Feb. 5, 1992)
Wilson v. Eu, No. S022835 (Cal., filed Sept. 6, 1991)	*Members of the California Democratic Congressional Delegation v. Eu*, No. C 91-3383 FMS (N.D. Cal., filed Oct. 21, 1991)
Voinovich v. Ferguson, No. 91-1882 (Ohio, filed Sept. 19, 1991)	*Quilter v. Voinovich*, No. 91CV-2219 (N.D. Ohio, filed Nov. 1, 1991)
People ex rel. Burris v. Ryan, No. 72662 (Ill., filed Oct. 11, 1991)	*Illinois Legislative Redistricting Comm'n v. La Paille*, No. 91 C 6318 (N.D. Ill., filed Oct. 4, 1991)
Andrews v. Legislative Reapportionment Comm'n., No. 190 ED Misc. Dkt. 1991-Consolidated (Pa., filed Dec. 12, 1991)	*Harrison v. Legislative Reapportionment Comm'n*, No. CA-92-CV-0603 (E.D. Pa., filed Jan. 30, 1992)

SENATE REDISTRICTING COMMITTEE
March 27, 1991
123 State Capitol
1:00 p.m.

Minority Group Testimony

Transcribed by Mary Hennessy
Committee Secretary

SEN. MOE: Members, be seated. That, just in terms of the individuals who are going to testify, obviously, a major concern we have on this redistricting, has to do with the minority population in the state. And last week or last meeting we had ten individuals testify and today we have scheduled a few others. So I'd like to call on them in the order that they're listed on your agenda. First of all, Mr. Lester Collins. Is Mr. Collins here? Mr. Collins is not here.

Secondly, Mr. Roger Head of the Indian Affairs Council. Mr. Head.

MR. HEAD: Good afternoon, Mr. Chairman and members. I'm Roger Head. I'm Executive Director of the Minnesota Indian Affairs Council. The Minnesota Indian Affairs Council was created by the legislature in 1963 to address the issues facing American Indians in the State and to act as a liaison between the state and tribal governments. I want to thank you for the opportunity to testify before your committee today and to specifically address the issue of redistricting and the effects of redistricting on the Indian people, particularly those on the 11 Indian Reservations in the State. As many of you are aware, in 1990 preliminary

census figures indicated rapid growth in our American Indian population. In 1980 the census figures were 34,831, and in 1990 the figure rose to 49,900. This represents a 43% increase in the recorded population figures. This increase in the population has been attributed to an increased birth rate, mobility from other states to our state and an increased awareness and sense of pride in identification of being an American Indian which was also reported in the major metropolitan newspaper within the last couple of weeks.

I must remind you that this identification is also an affirmation of the recognition of one's tribe. We are not considered as individuals as much as we are a political entity with a special relationship to the federal government and the state recognition of the relationship.

Redistricting is a political concept that does not recognize this relationship of tribes as distinct political entities, and, in fact, diminishes this authority by creation of boundaries that divide and dilute tribal authority under this political concept. How does this translate? Indian people are not provided the opportunity to participate in real opportunities for representation at the local government level, meaning county boards, city councils and the like. Given the opportunity for participation as an elected official, we can provide the leadership and understanding that is often overlooked and becomes an issue to address to the legislature or courts. Meaning that, I think we can see county governments come and talk about what they perceive as an Indian problem, they have no one to deal with, no one they can work with, and no one they can talk to, and that's a perception. The Minnesota Indian Affairs Council has utilized its unique mission to act as a liaison

between the state and local government. If redistricting isn't serving the purpose of all its constituents and with appreciation of all the issues, redistricting won't get the attention and support of the Indian people in this state. You at the legislature have the opportunity to get this attention and support when you consider the tribes and their political status in this redistricting procedure. I want to thank you.

SEN: MOE: Any questions of Mr. Head?

SEN. BENSON: Can you explain to me, I have a quick question. I don't want to take a lot of the committee's time, but, can you explain to me please, I'm not that familiar with the organization, tribal organization and those kinds of matters, but evidently they elect people to tribal councils, some governing body within the reservation or whatever, is that correct?

MR. HEAD: Mr. Chairman, Senator Benson, that is correct. We have, with the 11 reservations in the state we have elections that have a chairperson and secretary-treasurer and council members with districts. The major reservations in the state that comprise the Minnesota Chippewa Tribe have identical schemes which they elect which is a chairperson, a secretary-treasurer and four district people. The Red Lake Reservation that I am from is a little larger with a chairperson, a secretary-treasurer and representatives. The Dakota reservations and the southern tier of the state is basically the same as the Minnesota Chippewa Tribe, with the chairperson, secretary-treasurer and council representatives.

SEN. BENSON: How often do you redistrict?

MR. HEAD: Mr. Chair, Senator Benson, about every 10 years they are looked at in redistricting. In the past those numbers have remained fairly constant.

SEN. BENSON: Have district boundaries changed?

MR. HEAD: In some instances some have. Many remain the same. Mr. Chairman, there's another point. People who leave the reservation do not lose their right to vote. They vote no matter where they move to, whether it be California, the Twin Cities or any other place. They vote but they must vote in that original district. They can vote for leadership of the reservation, the tribal chairperson, secretary-treasurer, but they must go back to their original district when they vote. So that makes it very difficult when redistricting questions come up.

SEN. BENSON: Have you, when you're talking about the numbers of the Indians accounted for in the census, you highlighted the number reported. Did you mean to infer yourself that there was an undercount there or things like that?

MR. HEAD: We looked at the data and we used organizations like the Indian Health Board of Minneapolis. Their records throughout a year, I think it was 1987, indicate that a number of patients that they've seen throughout that year and judging 1987 to 1988, we think 49,000; its probably about 15 to 25%. We can't put our fingers on it, that's why we didn't mention it, we used that report. I guess that 60,000 may be the number. Real figures. I would guess we would be using those data. Labor statistics of the Bureau of Indian Affairs would be about 60,000.

SEN. MOE: Any other questions? Senator Pogemiller.

SEN. POGEMILLER: Sure. Mr. Head, with particular interest in the American Indian population in Minneapolis, which is fairly concentrated, are you, do you have any feedback from the community or do you have any suggestions or recommendations on considerations we might want to make regarding redistricting in Minneapolis with regards to that population? I think the largest American Indian population is 60A, District 60A - 4,700 and I am wondering statewide what...

MR. HEAD: Senator Pogemiller, Mr. Chairman, you realize that the shift in the Indian population is I think at 60A, it's called Philips neighborhood in Minneapolis. That is, they're also mixed with the other minority populations here, some Hispanic, Blacks and Asians.

SEN. POGEMILLER: Mr. Chairman, District 60A has currently 6,400 African Americans, about 4,700 American Indians, 2,800 Asians.

MR. HEAD: I think that my thoughts in drawing and using those populations, that data for redistricting, we have the opportunity to set an example for locals, the local governments also, in recognizing to the fact that we are a significant minority population in these areas. One example was in Red Lake, the reservation that I come from. Counties, when redistricting the county commissioner lines, used a little creek that I grew up near and split the reservation in half. And it was my thought, if they would have included, been inclusive in including the Indian people in those towns, so that

what you have is an Indian at the table looking at solutions to problems perceived or real and in doing that you find a solution.

SEN. POGEMILLER: Would you repeat that?

MR. HEAD: Be inclusive, be inclusive. I don't think we'd say that we want specific Indian districts, it's silly to say that because, Senator, it's a lot of hard work, getting elected...senator in senate district 4. But taking into account those population in those concentrated areas.

SEN. MOE: Any other questions of Mr. Head? If not, thank you very much.

SEN. DECRAMER: Excuse me, Senator, Mr. Chairman, when you look at the district lines, I think that might have been, are there any reservations that are split right now by legislative district lines in Greater Minnesota and other metropolitan areas like Leech Lake, is it cut in half by two districts, Red Lake or...?

MR. HEAD: Mr. Chairman, Senator DeCramer. I think there is in some instances. Leech Lake may be slashed in some areas. The biggest issue I would consider is economics. In Bemidji, with 11,000 population, is a mere 30 miles from the Red Lake Indian Reservation. Red Lake is in District 1. I mean senators and representatives, I believe are doing good work in representing the views of that Reservation very well. If you would tie us together with economics and force Bemidji and force Red Lake to work together on issues and for electing their senators and representatives, you may also find that that's an easier way to work. You

may find, as I said, it could be the real problem or Indian problem disappear.

SEN. DECRAMER: Has it ever been to your advantage to have it split, to actually have two legislators working on behalf of the interests of a particular reservation community at Red Lake? Was it ever to your advantage, the fact that the reservation is split because of everything you said, to have two people working on your behalf, that than say two members of the Senate rather than just one person?

MR. HEAD: Mr. Chairman, Senator Decramer. It may be, but the example in the past, bringing back the county commissioner lines, we've had no representation, so it means none as opposed to two voices or votes.

SEN. POGEMILLER: A follow up on the situation in Minneapolis with these numbers in concentration in District 60A. The large concentration of 4,700 in one area is also in with these other areas of population, 2,800 Asians and 6,400 African Americans. What if it were possible to separate those populations, would that be something positive? Or another, if the majority of the African Americans live in this part of the area and the majority of Indians live in this part, what you'd be your thinking on that with regards to having them in the same districts or separate districts, in terms of representation, what is your, do you have any thoughts on that?

MR. HEAD: Senator Pogemiller, I don't think that's possible. But I think the community has one thing that's positive and what's positive is keeping them together. The community has one thing in common and that is poverty. And keeping them together is

giving them the opportunity to elect and to have representation. It would bring a voice from that group. That would be the finest scenario. The other scenario is to cut it up in three areas–we have poverty and jobs in common.

SEN. POGEMILLER: In this sense, if someone could get enough of that population, a large enough voice in the district to.... Because they never really had enough, for about 15,000 with both of these groups, 30,000. Thank you.

SEN. MOE: Thank you very much Mr. Head for your testimony.

Before I call on the next speaker I just want to say that the Committee also contacted the St. Paul Urban Coalition and they indicated they did not have staff available to testify. The St. Paul Urban League and the Urban Coalition of Minneapolis, they've indicated that they support the positions of the other, of the four minority councils that would testify before us. And the Minneapolis Urban League indicated that they would call if they could make it. And as I indicated, we have contacted the Indian Affairs Council, the Spanish-Speaking Council, the Council on Black Minnesotans, and the Council on Asian-Pacific Affairs. With that, Mr. Albert de Leon, Executive Director for the Asian-Pacific Affairs will be called on.

SEN. POGEMILLER: I did have the opportunity to spend time, to represent the Senate a little bit, to attend a House hearing in North Minneapolis, at the Pilot Cities Regional Center, at which time the House took testimony with regards to, it was mostly African American population and there were several representa-

tives, so just to point out there was some Senate representation, there were some Asian-Pacific....

SEN. MOE: Mr. De Leon.

MR. DE LEON: Thank you, Mr. Chairman. Thanks to the members of the committee for inviting me. I'm am Dr. Albert De Leon, Executive Director of the Asian-Pacific Council in Minnesota. The redistricting issue is very high in our community. There is a newspaper article that was printed last night and the headlines include the 1991 redistricting. I guess it shows the affection of my community, they even put my picture in the newspaper so please don't throw it away. As you well know, the 1990 Council–there is another newspaper clipping that is being distributed to the Chairman and members of the Committee. We have 193% increase from 1980 to 1990, one of the highest percentages increases in the nation. That also reflected that we have about 7,000 to 8,000 Asian-Pacific Minnesotans. We do have an undercount though, of about 7,000 adopted children and 3,000 Amer-Asians. So this would bring us to about 83,000. And if we tend to reflect on redistricting, I was given the data which I'm sure was given to you by the demographer, and by just looking at the working sheets here it would seem to me that 65A House District has over, almost over 5,800 and I would think 66B has over 4,000. These are the higher rates of the population density of the Asian-Pacific population followed by 57B, is over 3,000.

One of the requests from our community, Mr. Chairman for this committee, perhaps we can assist you in holding town meetings. There are many members in our community who really don't know too much what redistricting means. We'd like to get a statement

from the Chair and we'd like to translate this into 12 Asian languages because of the interest to be involved and participate in the 1991 and 1992 elections. Of the new refugees that we have, 15%, for the first time will participate in the election process and we would like to do a better voter education program for them. Of the immigrant population, 25% who are now American citizens will be involved in the election process and would like to participate in the various caucuses and participate in the various campaigns. We want to assist in anyway so that they will be educated.

So the request that comes from our Council is that May is Asian-Pacific Month and we hope that we can do something during the month of May to kind of assimilate the information, how important it is and that the information or letter would come from the Chair, we would be glad to give some translation so that the Hmong, Vietnamese, Cambodian, Laotian, Philippine, Korean, and Chinese, Hmong and the other languages that we have. At this level, there is very little information, Mr. Chairman, sad to say, simply because I think we need to bring this committee closer to the communities that we serve and I thought maybe that a Town Hall Meeting would meet that purpose. And if there is any way that we can do it, sometime in the month of May onwards, and meet with the various communities because of the diversity, I think this would be very helpful to them. I'll be glad to answer any questions.

SEN. MOE: Any questions of Mr. de Leon?

If not, let me just say that I think that is an excellent suggestion. On behalf of the Committee I would be more than interested in working with you to not only help with things by explaining the redistricting process, but, to probably, that will have as many

explanations as there are committee members, of course. And I think it's the healthy thing about the process. And also, I think it would be good, a good process to engage into the whole political process and to use the committee in that, as a forum, I am more than willing and if the special designation of the month of May, that might be a good time. The earlier in the month would be better.

MR. DE LEON: Yes. Members of the Committee, we do not have any Asian-Pacific person in the legislature. Hopefully in six to eight years from now we will have somebody of our own sitting in your table to kind of illustrate that lesson of the old principle "no taxation without representation." So, we would like to rely on you to help to represent us. Chuck Hazama of Rochester is the only Asian-Pacific elected official and he said that it's very lonely and others should be participating.

SEN. MOE: Everybody at this table knows him.

DR. DE LEON: But we look forward to the Town Hall Meeting. As you well know, we have concentration of Asian-Pacific persons in the Twin Cities; we have St. Cloud, Rochester, Mankato. We have a large refugee population in Moorhead and also in Duluth. So when we look at the Town Hall Meetings, we are really looking at five or six meetings spread out during the next ten or twelve months and I think that's the best way to reach our community. Thank you.

SEN. MOE: Thank you for your testimony.

Mr. Lester Collins, from the Council on Black Minnesotans, welcome.

MR. COLLINS: I'd like this to be very brief. I am waiting to give testimony in the House on a particular bill. I thought I'd walk over to see what things we have here. Let me very briefly say, I share what comments I picked up as related to Dr. de Leon's testimony as relates to, I think yet our community, in particular it still does not have the knowledge and does not clearly understand the ramifications of the redistricting process. The Council itself will be holding meetings here and we'll be doing one jointly with the Metropolitan Advisory Council, the Minority Advisory Council and with the Council in terms of redistricting, but the concerns that I specifically have; I've been looking at the history of where this country is coming from. It comes from, particularly as it relates to the more adverse affects from redistricting when it's not done clearly, properly, with the kind of considerations it should be.

Having read your senate resolution, I guess you call it your concurrent resolutions, many of the concerns that I have, particularly towards the bottom of the page is what I'm looking at. It says the districts must not dilute the voting strength of racial and language minority populations and where concentration of a racial or language minority population makes it possible, the districts must increase the probabilities of members of the minority will be elected or must be elected. I read that quite a while ago, and I was quite pleased to see that kind of language within the laws and within a resolution. So those are the kind of concerns that I would bring to you, just to remind you that in term fracturing, and other kinds of things, not so much I don't think, with respect to the State of Minnesota particularly, states like Georgia, California and other

areas; there are more than enough examples of fairness in terms of how districts are made up. It certainly has not been what they should have done and I only urge you, and as I sit before your, to continue to do and adhere to what you have put into resolutions in terms of representation.

Let me do a little editorial as relates to the councils. I guess I would advise not only the members here but particularly the State Planning Department. I've been at a couple of hearings where presentations have been given and I have learned more than I ever could know had I not attended those meetings and I'm real concerned that we do take this information, particularly to the community, that they begin to understand, and again we've accepted it as a charge and as a responsibility that certainly has integrity and trust, any information that needs to out there. Many of the things that we do address at the council are not the types of things that at least necessarily today or tomorrow will make a strong difference, but I believe if we begin to educate our populations and our people now, or especially when we look at ten years from now, in terms of a census or just those kinds of things, that they will be more knowledgeable with the process actually.

Those essentially are the comments that I have on the basis of twenty other things that are running through my mind, as relates to being in 3 or 4 other places.

SEN. MOE: I believe we identify with what you're doing.

MR. COLLINS: And believe me, I know you do.

SEN. MOE: Are there any questions of Mr. Collins? If not,

SEN. POGEMILLER: I would just encourage you, in your dealing with folks when you are talking with them about redistricting, that any member of the community that is particularly interested in Minneapolis please have them contact me because I live in the northern part of the city and I may not be as familiar with the southern parts of the city as I might be so I would be eager to meet with or visit with anyone who has suggestions, block by block.

MR. COLLINS: I will certainly make that known, and again we are in the process of planning a conference in the very near future and redistricting is one of the key issues we are going to be dealing with. And again this is all the so-called communities of color, not necessarily the just the Afro American community, and it is an area where it certainly impacts us all, more in the past adversely, I believe, impacted the communities of color. I commend your effort and particularly your invitation to be here to speak today certainly is more than a step towards where we should be heading, in fact where we are going.

SEN. POGEMILLER: I don't believe you were in the room when I asked the question of Mr. Head with regards to the American Indian Community. In south Minneapolis we have a significant Indian population in the Philips neighborhood, I think the number is 4700 in 60A, in that same district I believe the number is slightly higher for the African American community, about 1,000 more. In 60A there are 6200 African Americans and 4500 American Indian, 2700 Asian, and the question I asked Mr. Head was, what was his thinking with regards to whether, if possible, we should try to separate those populations as we are drawing maps

or whether pulling those populations together in an overall district is beneficial. I'm not sure it's possible.

MR. COLLINS: I saw Roger in the hallway. I wish I'd known you asked him that question, because I'd have asked him what his answer was.

SEN. POGEMILLER: I'll tell you what he said, I think. And members can correct me if I'm wrong. I think that he said was that his sense was that there is a community of interest of poor people that he would think it might be beneficial to keep those populations together because they would then have a larger group among the larger white population. If you separate the populations you would then have smaller people-of-color populations percentage-wise in with white populations. I think that's what he said.

MR. COLLINS: My answer would be, having been in conversation with the community particularly, I was given a call regarding that concept or the theory of that happening and I guess it was that, in fact, those communities working jointly together certainly have or possess more power from the standpoint of being, my answer really would be that I sure would like to know what the community and what those individuals themselves kind of, you know, feel in terms of an answer to their question. So I guess I'm reluctant, theoretically. I'd say certainly those communities coming together, not along the lines, would be the way to go. On the other hand, any one of those communities could feel that that's quite the opposite of the direction it should go.

I live in Powderhorn. I don't live in Philips, but theoretically what I've heard and my concern is definitely more towards the whole

idea of not, you know, dividing them in the community, realizing the poor that it does possess..

SEN. MOE: Any other questions? If not, thank you very much Mr. Collins for your testimony.

Are there any others from any of the communities that are here today and wish to testify?

MR. WATTSON: (Senate Counsel) Mr. Chairman, members of the committee. Most of you may have seen what is included in your materials today. There are two maps on the minority populations and a map of the 87 counties and a separate map of the seven counties along with a table showing the total minority population that was used to make up those maps. These are again provided to the committee by the State Demographer, Mr. Gillaspie.

SEN. POGEMILLER: I am asking staff what their sense of this is, but it seems to me that when this is up on the computer in the next couple weeks, would it be possible to get a visual representation on a smaller scale block by block or census block by census block so we can look at the minority populations in a way that would help us draw those lines? I think there is a capability to do that.

SEN. MOE: I think that would be good. Where are we in terms of the capability in being able to do that?

MR. HAGEN: (Committee Administrative Assistant) Each of the caucus worksites will have a large portion of the data base loaded

onto the work site next week. At that time we should be able to begin to do that.

SEN. POGEMILLER: Mr. Chairman, at least in your part of the state and the two inner cities, that is one of the first things we need to take a look at is how we can draw the best districts as possible for those special populations, as a first step, so we don't get into a position of fracturing those populations.

SEN. MOE: O.K. Also on the agenda you have indicated further discussion on the resolutions and so I've got a couple of points that have been brought up before and one of them stated, I want to break in about 15-20 minutes, so we won't take final action, but I did want to bring this up again so that if there are any other concerns that you notice in your reviewing of these resolutions and discussion here that we have had since we first brought them before the Committee that we could ago over them.

(discussion of other topics omitted)

MINNESOTA SENATE
May 16, 1991

S.F. No. 1571
Senator Pogemiller's Explanation
Impact on Minorities

Transcribed by Faegre & Benson

SEN. HUGHES: Senator Pogemiller.

SEN. POGEMILLER: Thank you Mr. President. Members, Senate File No. 1571 can be found on senate printed page 671.

As Senator Moe mentioned, Article 4 of the constitution requires the state legislature to redistrict itself after every census. That is our duty and it is our task. Its a difficult task because it deals with individuals and political careers of the members who we have all become friends and colleagues with. But regardless of the difficulty, we must keep in mind that redistricting and a redistricting plan is not to be drawn for legislators. Redistricting should be drawn for the citizenry, for communities, for towns, for communities of interests, for people of color, for opportunity for them, for fairness and for numerical equality. Justice Earl Warren says that achieving a fair and effective representation for all citizens is the task, the basic aim of redistricting.

Let me briefly talk about the process that has gone on with regards to this. Senator Moe has set up a several groups that have worked in this area. Obviously there is a policy committee on redistricting in the Senate chaired by Senator Moe. There was the bipartisan subcommittee on redistricting of the legislative commission and

. . . of which I served on since December. Former Senator Randy Peterson, Judge Peterson, sat on prior to me. Senator Storm is a member from the Senate also. The task of that group was to purchase the technology necessary for redistricting, technology that has been made available to each caucus of the state Senate and allowed the results that we will see tonight on the Senate floor by each caucus. The . . . in fall of 1989 a timetable was adopted whereby . . . which called for basically redistricting to begin by May 1 of 1991. At that time is was assumed that the census data would arrive about April 1, 1991. Fortunately, the census data have arrived about five weeks earlier and that made it possible to actually do the crunching of numbers with the technology to afford the opportunity for both caucuses tonight to present plans to the body. Public hearings were held by Senator Moe's redistricting committee and we took testimony from various groups. Some of the testimony by cities and counties, Citizen's League, League of Woman Voters urged that we take action early. They urged us to do or accept our constitutional responsibility to redistrict ourselves and not wait until the last minute when a plan would be rushed through under tremendous political pressure and would create . . . that would be like next March and would create a very difficult time for local communities to set processes in motion for redoing the boundaries of local cities and redoing the precincts and getting ready for the elections. So when Senator . . . when I was appointed to the committee, Senator Moe had a simple task, simple job for me and he said, "if possible, lets get redistricting done this year." Because the data arrived early we were able to accomplish that. My hope is that the full Senate will agree, as our committee has, that a good, fair plan has been produced, one that would be good for the citizens of Minnesota.

The Senate will recall that we have adopted standards, a concurrent

resolution with the House, for legislative redistricting. Let me review those briefly. One of its standards was that . . . the Senate would be composed of 67 members. Another factor would be that the representative districts would not be divided . . . in other words it would be nested within the senate district. Another criteria was that we wanted to have no more than a 2% deviation from the ideal population of 65,500 . . . 65,300. We have accomplished that in this plan. The courts in general had said for legislative plans, if you are able to maintain a deviation within at least twice to three times of that, you're doing a good job. And . . . we've set a fairly strict standard and have accomplished that.

We also have a standard that the district should be composed of contiguous . . . should be composed of convenient contiguous territory. That's a constitutional requirement in our state constitution. In addition, we said that the . . . to the extent consistent with the other standards in this resolution, we would like the districts to be compact. The districts will be numbered in regular series, which they are in this plan. The districts are convenient and contiguous I believe and I believe they are also compact, as best as possible.

Very important feature of our resolution, that the districts must not dilute the voting strength of racial or language minority populations. And that the districts must increase the probability that members of the minority will be elected. This plan does that . . . we were very, very careful to consult on this issue with people from the community who know the voting patterns, who know the communities. And we did quite a bit of consultation and we believe we've come up with some real good districts that will afford the opportunity for, during the decade of the 1990s, increase

in the people-of-color representation in the state Senate.

Counties and other standards . . . counties, cities and towns should not be divided into more than one district except what is necessary to meet equal population requirements or to form districts that are composed with convenient contiguous territory. We have lived up to that standard. The key feature . . . a key feature of this plan as directed fairly specifically by the '82 court plan is that the major cities in the state, Minneapolis, St. Paul, Duluth, St. Cloud, Rochester are maintained fully with their population in senate districts and are only divided to the extent that is necessary to use up the additional population. For the city of St. Paul that means that there is one break of the boarder on St. Paul. And that is the break of 11,000 people. That's the number that St. Paul is over the ideal population for number of senate districts. In the city of Minneapolis there is one break. In the city of Duluth there is one break. So we believe that criteria of our standards is met.

Next criteria is that the districts should preserve communities of interest. This plan does that I believe. Particularly in neighborhoods in the state, particularly in the inner cities where we've been very, very careful to maintain neighborhoods as they recognize themselves in those communities. With regards to greater Minnesota, we've tried to keep together as best as possible towns and townships that view themselves as being a community of interest. In greater Minnesota, we have kept cities intact in most instances where their size dictates that they should not be split.

Let me then talk about the basic numbers of redistricting. According to census data there has been a shift of population in the state. And that shift dictates that greater Minnesota, the portion of

Minnesota outside of the seven county area, will have 2-1/2 less senate seats. In addition, the inner cities of Minneapolis and St. Paul will have one house seat less, roughly. That then means that suburban areas in the metropolitan area will have three additional senate seats. That's what the numbers say, that's the population shifts and that's what this plan does. There are three new senate seats in the metropolitan area in the suburban areas and that will afford the opportunity for greater representation in the suburbs in the state legislature. There was absolutely no attempt to deviate from that basic statistical fact. And each portion of the state that lost population has taken its hit, so to speak. It has taken the responsibility and its own portion of the state to . . . with regards to redistricting. That means that in the northeastern part of the state a senate seat is lost. That results in a combination of two current senate seats that combines two legislators currently sitting the the state Senate in Duluth. In addition, in this portion of the state we have combined or eliminated a senate seat, if you will, which combines two current city members of the state Senate. The districts as you know are numbered one across the state consecutively to 32.

If I could have some pages please. We have available for members and for the press a map that outlines the districts in this plan for greater Minnesota. The pages will distribute those. In addition I would like the pages, distribute these. With the map is coming an outline that gives for each senate district one through 67 a total population, a total numerical deviation from the 65,300 ideal and a percentage deviation. The largest district in the state would be district 16. The smallest district would be district 2. The deviation for those districts for districts 16 is 1.57 above and for district 2 1.85 below. The overall range is 3.42. That is a tremendously small deviation for overall range. The average

deviation is .66 for all senate districts. The average across the state for 67 senate districts is .66.

As I mentioned, the inner cities of St. Paul and Minneapolis population-wise have lost a roughly a house seat. For the city of Minneapolis the districts are numbered district 58, 59 through 63. The . . . all of those senate districts are totally contained in the city except for a rupture at the southern boarder with district 63 being a 60% Minneapolis district and a 40% Richfield district. That would leave you with a totally contained house seat in Minneapolis and a 80% suburban house seat and a 20% inner city house seat. With regards to the city of St. Paul, the population also dictates that there be one rupture of the boarder. That is done on the northern boarder of the city where 11,000 people are combined with the suburban Maplewood-White Bear Lake area. This would mean that you would have basically a 50,000 Senate . . . 54,000 suburban voters in that senate seat and 11,000 St. Paul voters.

Let me move then to the issue, while we have these maps up, of people of color voting opportunities. We have created three inner city districts for people-of-color opportunity. There is no guarantee, but my sense is that, if I could have some pages, my sense is that with these districts there will be a significant enhancement in representation in the state Senate within the next decade.

In St. Paul District 65, which is of a interesting shape, it is not the most compact district in the world, and that district has a total people-of-color population of 42%; 18% African American, 2% Indian, 13% Asian, 8% Hispanic. It includes the west side and the University/Dale area. Which University/Dale has a fairly significant African American, the west side has a fairly significant

Hispanic.

Moving to the city of Minneapolis, we were able to create two opportunities, state Senate opportunities. The first is District 61 in South Minneapolis, includes the neighborhoods of the Central neighborhood, the Philips neighborhood, the Whittier neighborhood, and it is a district that has 49%, nearly 50% people of color, 29% African American, 9% American Indian, 7% Asian, 3% Hispanic. Based on input from the community, there was a decision made to cut the district on the northern border at the freeway, a natural boundary, I-94 freeway. There is a fairly significant people-of-color population in Downtown Minneapolis. That's a fairly transient population, it does not vote very heavily. The . . . from the input we received from the community was that the opportunity for election probably was enhanced if you cut the border at the freeway and included more neighborhood areas where there are homeowners and longer-term rental. We did that. That does, I believe, percentage wise slightly brings down the total number for minority or people-of-color population, but that trade-off was determined based on input from the community as to what the reality and effective electability would be in the neighborhoods. It also allowed us to maintain the neighborhoods, many of which I've just mentioned, and provide identity for the district.

The second district is in the North Minneapolis area which is a very compact, nice district with natural boundaries, the Mississippi, Downtown, Hennepin Avenue basically and the city border. This district, District 58, has a 40% people-of-color population, 28% African American, 3% American Indian, 7% Asian and 2% Hispanic.

Lets put the statewide map up just briefly. One more area where a great deal of consideration was given with regards to the people-of-color population, and that's in the northwestern part of the state where you have three American Indian reservations. The determination based on input from communities of interest up in that part of the state was that in District 4 we would bring together the entire Leech Lake reservation. This map does that. That district . . . that reservation used to be split by two senate districts. We have now combined that into one senate district. In addition, District 2 will encompass two reservations. In the northern part, the Red Lake reservation and further south the White Earth reservation. Those two are totally contained senate District 2 and are also totally contained within one of the house seats in that area of the state. Again, based on input from the community, the decision was made to do the drafting in this particular fashion. We believe that that provides an opportunity for representation, and as members of the Senate know, the rough area of District 4 currently has an American Indian member of the . . . in the state Senate.

Lets move then to the suburban areas.

(discussion of other topics omitted)

SEN. HUGHES: Senator Storm is recognized.

SEN. STORM: Thank you Mr. President. Senator Pogemiller, first of all I want to thank you for the deep-willed kind of explanation and what I suspect has been a significant effort on your part to arrive at this particular point in the process for redistricting which is a major challenge and responsibility for the Legislature. I do have a couple questions. You frequently during

your presentation mentioned public input and the opportunity for the public to express themselves. Would you just tell us how much public input has there been into the plan that you described here this evening. My feeling was that there weren't many people of the public who even saw it before last evening when it was presented to the committee. Or was it presented to the public prior to that?

SEN. HUGHES: Senator Pogemiller.

SEN. POGEMILLER: Mr. President, Senator Storm, the redistricting committee and the . . . took a tremendous amount of input from the public during its public hearings, took input . . . and I should mention, I also attended some hearings that were offered by the Redistricting Committee in the House of Representatives. They allowed me to sit in on some of theirs, and I brought that information back to . . . Senator Moe. The hearings we heard from local officials and from citizens regarding what should be the principles and the standards by which we should do redistricting that resulted in the excellent set of standards that we did adopt jointly with the House. We heard from the elections . . . local election officials that we should try to do this as quickly as possible from the League of Woman Voters also from the Citizen's League and the various other good government groups. And we made a particular effort to surface what I termed at the time a people-of-color footprint for the inner city communities which basically outline census data by precinct of where the concentrations of those population were. We presented that publically weeks prior to any final determination of what the exact lines would be. We took input from people-of-color communities on those footprints and, as I mentioned during my presentation, we accepted input from those

communities as to precisely how to draw those districts.

I might say that myself, Senator Cohen, and several members of the other body met with groups of people-of-color communities representing the various nationalities and language groups, and discussed with them redistricting and what a plan should look like. And we listened to input and actually provided some on-hands or on-computer, if you will, input by those communities with regards to carving the lines for these districts.

In addition, I personally have reviewed input from members of the Senate, I would say roughly two-thirds the members of the Senate on maps that they provided with regards to general descriptions of . . . based on their populations gains and losses where they felt the communities of interest were in their general area that they would think would be natural for the districts in their area to combine. And I myself and staff tried to take into account as best we could that type of input from members of the Senate. And, in addition, as you know, there is a tremendous amount of kind-of informal discussion. I believe a great number of party people and activists have been in consultation with various members of the Senate to discuss this. And we've also tried to incorporate their thinking. I will say also, that staff has consulted with various communities when a line became of concern as to where a natural border might be. There was some staff consultation with local people with regards to that also.

So Senator Storm, I think there's been a great deal of input and there's never enough. The Legislature never has enough time to let all four million Minnesotans review each piece of work that we do. And my hope is that we've balanced the amount of input and

access to the concepts and ideas behind this plan and that this plan will stand the test of time. As more and more Minnesotans review the plan, I believe they will find it to be fair, equitable, and a plan that they can be proud of and that they can work their political will with in the next decade.

SENATE REDISTRICTING COMMITTEE
January 6, 1992
318 State Capitol
3:00 p.m.

S.F. No. 1597
Mr. Bill Davis' Testimony

Transcribed by Mary Hennessy
Committee Secretary

SEN. MOE: You know, in the interest of time while you're looking at that if I could, ah, Mr. Davis asked for a chance to testify as well. I'd like, since it deals with the Congressional Redistricting why don't you call Mr. Davis forward. Thank you.
Mr. Bill Davis.

MR. DAVIS:
Thank you Mr. Chair and members of this body. Ladies and gentlemen, my name is Bill Davis and I serve as the 1st Vice-President of the Minneapolis branch of the National Association for the Advancement of Colored People. I also serve as the Chair for the same association at the state level of the social action committee and as Chair of the Minnesota State Conference of the NAACP Political Action Committee. We have looked at your Congressional Plan for the State of Minnesota with special emphasis placed on the 4th and 5th Congressional District with concentration on the people of color reside. We had an opportunity at our meeting to review both the plan that was submitted as S.F. 1597 as well as the other plan that was submitted to the Federal Courts as well. After reviewing the -

plans and having a lengthy discussion at our meeting, it was the recommendation and unanimous vote to support the plan contained in S.F. 1597 which keeps essentially the Congressional Districts of 5th Congressional District on the west side of the Mississippi River and the 4th Congressional District on the east side of the Mississippi River. We also want to thank those individuals who were thinking in terms of combining the two for their magnanimous gesture, however, we felt that we prefer to leave it as is. We find that there is a combined 4th Congressional District and 5th Congressional District we have about 22% people of color population and in talking to our legal counsel in Washington, D.C. at the National office their sense was that it was an issue for us to decide at the local level. They didn't feel though that the national would intervene however, they would support us on our decision and as I indicated our decision is to support the plan that has been presented today by Senator Pogemiller. Again, it is our sense that the Congressional Districts remaining separate (inaudible) is appropriate for the balance of this century. We think it's important that people of color have an opportunity to create wards in their vested interests or congressional districts in their vested interests. In this particular situation we do not see that advantage at this particular time and as such we have gone on record in support of the plan as presented by Senator Pogemiller.

SEN. MOE: Thank you. Questions? Senator Knaak.

SEN. KNAAK: Was any of your deliberation at all influenced by presumably the (inaudible) records of the two incumbents that are currently in these two districts and any concern they had that a new plan might provide difficulties for them?

MR. DAVIS: Mr. Chairman. Senator. That was not part of our deliberation. There may be individuals that have been in that delegation and might have had that as part of their thinking however, that was not something that rose and was discussed by the group and taken into consideration in making our determination. We were purely looking at what made the most political or what made the most sense from a posture for the NAACP at this particular time. Ah, when we looked at the numbers and looked at the information presented we looked at the configuration proposed and the maps that merged the city of Minneapolis and west part of St. Paul together into one Congressional District, it did not engender any support from that body.

SEN. MOE: Any other questions? Thank you Mr. Davis.

MR. DAVIS: Thank you.

MINNESOTA SENATE
January 7, 1992

S.F. No. 1596
The Laidig Amendment

Transcribed by Mary Hennessy
Redistricting Committee Secretary

Sen. Laidig: Mr. President, Sen. Pogemiller, I've made the long trip from the SOB to the 3rd floor and as I have indicated we perhaps have not done as good a job legislatively as we done in the congressional redistricting. We need to do a better job and we are. At this point we are about 75% complete on a compact legislative plan. When that's complete we'll share that with you. The Senate Republicans will have an alternative plan and we've not done as good a job as we could have to this point. I'm sure it's frustrating. It's important to have things on paper and on maps. There is a particular concept we'd like to raise in the legislative arena. That's the issue we visited about privately and that is minority representation. Part of the debate has been waiting for an amendment that we discussed, I don't think its here and we can either wait for the copies or I can explain the concept you are familiar with, whatever your preference would be? O.K.

I've got a few hand outs here if you could just split them up. Two issues that our caucus will be presenting as an alternative in the legislative plan is we are working on a compact legislative plan. Trying to do legislatively what we've done in the congressional area. When I was asked to resume or to take over the responsibilities for the Senate redistricting. The first question was, where is the computer. I found out that our computer is in hands of the

federal court with the three masters. My next question is where is our staff person and that person has resigned or retired. So I came to this without a computer, without staff. So a slight disadvantage, we are now working off of the House Republican computer on a legislative plan. Today, Senator Pogemiller, we want to introduce a concept that the Senate Republicans feel strongly about, know that you are aware of, you've attempted to resolve it and to begin simply the concept that any legislative redistricting the idea of empowering and enhancing minority opportunities is important. As we talked earlier in the legislative plan our starting point will be one person one vote, next will be compactness to prevent gerry-mandering third our compact plan will reflect population shifts fourth, it will likely have two Senate Districts in Duluth and fifth, is an area that the courts have said, in order to enhance minority opportunities, you have some flexibility that you don't have, flexibility in deviation, population deviation and flexibility in the way the lines are drawn. What I have handed to you is a again is a concept and the amendment I understand is on its way.

The first is we have taken the city of Minneapolis and as best we can and obviously its an early concept and I'm sure that those who represent Minneapolis will understand some problems quickly and there are some problems. But the concept is within the city of Minneapolis, if you work hard you can enhance the opportunities for black Minnesotans to perhaps influence or elect a representative. I think its pretty clear that there are no black Senators. In St. Paul we have an opportunity to enhance the Asian influence. And so the amendment that's on its way does two things. If you look at the hand out that says Senate District populations. Along the left hand side District 58 - 62 are in Minneapolis, 64-67 are in St. Paul, gives you the total population, what the absolute deviation

would be under our amendment and then below that gives you an idea within the districts that we would draw differently, it gives you what would be the affect on Black, Indian, Asian, Hispanic, and others.

The second hand out sheet gives you an idea what happens in the House Districts in Minneapolis and St. Paul. May or may not be of importance to you. So again, the concept that we introduce today from the Senate Republicans in legislative redistricting is that the courts, after looking at one person one vote, compactness to prevent gerrymandering and prevent incumbents from dominating, population shifts, the next starting point is the ability to draw lines in the flexible that the courts have given us to draw these lines to truly enhance and empower minorities. As briefly as I could Sen. Pogemiller, that is the concept. I don't know if the amendment has arrived but we could continue to discuss it and whatever your preference might me.

Sen. Pogemiller: Mr. President, Sen. Laidig, would you yield Senator? Is this part of a full legislative plan? Do you have other pieces of this? Do you have the suburban areas and the greater Minnesota areas?

Sen. Laidig: Mr. President, my understanding and I'll look to the side when I respond. My understanding is that the greatest opportunity to follow the courts direction to enhance the opportunities comes within the cities of Minneapolis and St. Paul for black and asians. To make things simple today, and I don't think were going to get the complete amendment, Sen. Pogemiller, and if we don't we'll have to do something. What we did to make things fit with your plan, our amendment takes your description,

you plan, just goes into Minneapolis and St. Paul and makes the changes within those legislative Senate Districts.

Sen. Pogemiller: Is what you are saying is that you can take Minneapolis, St. Paul descriptions out of 246 and lay this in instead. That's correct?

Sen. Laidig: Yes.

Sen. Pogemiller: So, you do not have a legislative plan for the suburban areas or Greater Minnesota yet?

Sen. Laidig: Mr. President, Sen. Pogemiller, no we do not.

Sen. Pogemiller: Is this layout the same one that you have offered to the State Court?

Sen. Laidig: Mr. President, Sen. Pogemiller. The difficulty I think is that after I came into this process, I reviewed what my predecessor and others had negotiated with House Republicans and found that perhaps there was a better opportunity for our caucus. So no, the plan that was submitted to the State Court is a plan that I'm talking to caucus members that perhaps we can do better and no, this is a new idea.

Sen. Pogemiller: Is this the plan for the city of Minneapolis and St. Paul that you have offered to the federal court?

Sen. Laidig: Mr. President, Sen. Pogemiller, no it is not.

Sen. Pogemiller: So this is a third plan now. Not even a whole plan, its a partial plan. Mr. President, is this a plan that is accepted by the minority caucus in the House of Representatives?

Is this a plan you have agreement with the minority caucus in the House of Representatives?

Sen. Laidig: Mr. President, since both of us have served over there, I think that the traditions of the Senate are that our deliberations are foremost but breaking with tradition, no.

Sen. Pogemiller: Mr. President, finally, is this a plan that the Governor of the State supports and has part and parcel in designing?

Sen. Laidig: Sen. Pogemiller, can I preface my answer by saying under your plan, your district 61 has a black population of 29%, our plan has a district that is 43% black. That gave me cause to disregard the House Republican Plan,disregard what the Governor might do, but no the Governor has not indicated that this is a concept that he supports or would sign. But were not that far along. But no, I do not have that from him.

Sen. Pogemiller: Mr. President, Senator, is this a plan that you have reviewed with people of color and are affected? NAACP, the Asian Council. Is this a plan that has been reviewed by anybody?

Sen. Laidig: Mr. President, Sen. Pogemiller, that is an excellent question, the answer is no. My thinking though sir, is that we have until the 22nd of January in which to do a legislative plan.

But no, those are groups and individuals that I intend to go out and refine this concept. No it's brand spanking new and we want to you to see it for the first time.

Sen. Pogemiller: So, Sen. Laidig, this is the third plan now, not the same plan that your attorneys have put into the State Court not the same plan your attorneys have put into the Federal Court, its a plan that there is no agreement even with the minority caucus of the House. Is there agreement with the minority caucus in the Senate with this plan? Apparently the Governor has not had a chance to review it either. And in addition, it is a plan only for the cities of Minneapolis and St. Paul not for the suburban areas or Greater Minnesota. Senator, let me ask you this. Do you agree with the notion that has been promoted since about 1987 by Citizens League, Common Cause, all the good government groups, League of Women Voters all the local election officials, that we should do redistricting early? That we should try to get it done, certainly before the election but hopefully, before precinct caucus, would you agree with that notion?

Sen. Laidig: Mr. President, Sen. Pogemiller, yes I do.

Sen. Pogemiller: Mr. President, Senator, don't you think this is, aside from the merits, don't you think it's a little difficult to deal with, now the third plan, that is not even a plan that is supported by two of the major players yet? It may be, I don't know, but it isn't yet. Perhaps Senator, if you could get the Governor and the Republicans in the House to agree on this as a first step and then get a suburban plan that both caucuses and the Governor could agree to and then a rural plan that your Governor and both caucuses could agree to. If you could get all of that done before

we adjourn today and vote on final passage of this corrections bill that we could consider that on the Senate floor before we're done.

Senator is seems to me that we have, I'm not sure whether, I think this is a serious attempt by Sen. Laidig. I grant that you're new on the scene and you've done a lot of good work, apparently in the last two weeks. I wish you had come sooner. I don't know how we can. If this had merit Senator, I'd almost be tempted to say let's continue the process another three or four months on this. But on the, as you know Senator, I represent Minneapolis, I come from Minneapolis, Senator, Senator Laidig, Senator, and I don't know that we need to get into the merits of this because it's not a full plan. Has this language been reviewed by local government officials so we know it's correct? Is it correct that your plan puts Representative Jefferson and Representative Rice in the same district.

Sen. Laidig: Mr. President, yes it does.

Sen. Hughes: Senator Pogemiller, I was just commenting that we can get detailed and I understand the importance of the detail, the other body is in recess waiting for us. But we'll just remember that we'll keep plowing ahead.

Sen. Pogemiller: Mr. President: The answer was correct. This plan puts Representative Rice and Representative Jefferson in the same district. And is it also true that this plan, Mr. President, these are important questions I think the consideration of the members of the Senate.

Sen. Hughes: We understand that Senator Pogemiller, proceed.

Sen. Pogemiller: O.K. then Mr.President, Sen. Laidig, is it true that this puts Representative Mariani and Representative Orenstein in the same district?

Sen. Laidig: Mr. President, my information is no. One is in 64A and the other in 64B.

Sen. Pogemiller: O.K. then thank you. And is it true that it matches Representative Housman and Representative Vellenga in the same House district.

Sen. Laidig: Mr. President,I plead guilty. We have ignored incumbents so far and yes we have ignored some other incumbents.

Sen. Pogemiller: Mr. Chairman, I'll be very brief, this is the extend I want to discuss on this even though it's not a full plan. It's not just incumbents, I want members to vote against this amendment because its not a full plan, but in addition vote against it on the merits. Voting rights act straight up - you don't take an African American incumbent and put him in with a powerful committee chair into the same district. That does not enhance the opportunity for people of color. Even though the voting rights act doesn't specifically talk about women don't we have enough women in the legislature. Apparently not, because we are going to go out of our way with this amendment to put two women House members in the same district. The net effect of this is to eliminate a women from the legislature. I want to make it clear, there is no voting rights issue there, but doesn't common sense tell you that's counter to what's going on? Particularly when that other body just elected for the first time in the history of this state the first women speaker? Vote against this amendment on the

merits, vote against this amendment because it is not a full legislative plan.

Sen. Laidig: Mr. Pogemiller, I think we can do this pretty quickly, I have the amendment that Sen. Pogemiller and I have been talking about.

Sen. Hughes: The secretary will report the amendment.

Mr. Flahaven: Mr. Laidig moved to amend S.F. 1596 as follows, page 52, line 17, this is the A-4 amendment.

Sen. Laidig: Mr. President, I'll do it very quickly, this amendment deals only with the City of Minneapolis. Senator Pogemiller is right. This doesn't have the blessing of a whole lot of groups. There's been some new direction in the thinking of redistricting. I've made some suggestions. The purpose today is to suggest to the Senate, that between now and the 22nd of January when the federal district judge will hold its hearing, between now and then our caucus is going to work on compactness, population shifts and finally on minority representation through enhancement and empowering. We didn't have the time that we needed. I talked to Sen. Pogemiller before this session about what we are trying to do. Senate counsel has worked very hard in trying to get something to us. So today's vote, if you don't want to vote on the merits and you want to vote on the fact that its not complete, between now and the 22nd of January our caucus will have a legislative plan compact, disregards incumbents, prevents gerrymandering and it will enhance minority representation. It's a concept that were offering today to begin the process.

Sen. Hughes: The question occurs on the motion to amend. Roll call has been requested, the secretary will take the roll in respect to the amendment offered by Senator Laidig.

The secretary will close the roll. 21 Aye's and 45 No's the amendment is not adopted. 20 Aye's and 45 Nay's.

MINNESOTA HOUSE OF REPRESENTATIVES
January 9, 1992

S.F. No. 1596
The Knickerbocker Amendment
Impact on Minorities

Transcribed under the supervision of Lois Klostreich
Supervisor, House IR Administrative Support Staff

REP. KNICKERBOCKER: (continuing)

The other thing that this amendment does better than the proposed DFL bill is treat potential minority areas in a way that further increases their opportunity to elect minority members to the Minnesota Legislature. We are all obligated because of the case law that has come down in the last ten years to do what we possibly can to maximize the opportunity for minorities to increase their chances to elect one of their own, so to speak, to elective office. Under the DFL, plan a Native American or an Indian district is created in northern Minnesota that is about a 21% Native American, Second District about 9%, and so on. The Native American population is split under the DFL plan and concentrated under my amendment. We have created an American Indian or Native American legislative district that is 28% – 7% better than what the DFL have done. We have created a senate district that is around 16% Native American – about 5% better than what the DFL have done. Extending that kind of approach, even farther, you look at Minneapolis and the concentration of the Black community; the DFL has created a House district that has a maximum Black population of 47%. And a second, the Third Districts of 20% and 37% and in effect spread the Black population vote over three legislative districts.

We were able to draw a district in Minneapolis that better reflects an opportunity for Blacks to elect a member to the Legislature. We have two House districts under this amendment, one at 48% Black and one at 41% Black. What that means is that we have created a senate district of about 44-1/2% that is Black. We have given Blacks under this proposed amendment an opportunity to elect a member, not only to two House districts, but also to a senate seat. The DFL plan does not do that. I would stress the point that the proposal that you have before us in the form of this amendment does more for minorities in Minneapolis in terms of the Black community and other minorities, in St. Paul with the Hmong and Hispanic, and the Indian population in northern Minnesota.

We have very consciously tried to create opportunities for minorities and I think we have done that with this amendment to a far greater degree than what the DFL proposes to do.

(discussion on other topics omitted)

REP. RODOSOVICH: Madam Chair, Representative Knickerbocker. Then I would presume that your caucus is acting independently than of the Senate Independent Republican Caucus.

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. No, that is not a safe assumption to make. While all of us are independent, we have been in contact and worked through the Senate IR Caucus as well as it relates to legislative redistricting, and they are aware of this proposal. They are aware of the amendment. They are aware of what is being offered and they are aware of the fairness of this proposal, and I am sure there

would be bipartisan support for it if only all four caucuses could get together and start negotiating a legislative redistricting bill as we have been asked to do by the federal court panel.

REP. RODOSOVICH: Madam Chair, Representative Knickerbocker. In looking at the plan quickly, and I do appreciate that you provided a copy of that for me to take a look at before session started today, and I appreciate that. Am I to presume that this is the same plan that has been introduced into the federal court?

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. Yes.

REP. RODOSOVICH: O.K. So this isn't a variation then of any state court proceedings, it's the federal court. I mean, are we identical to the submission to the federal court? Is it similar? Is it a variation?

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. This plan, to the best of my knowledge, is exactly the same as that submitted to the federal court.

REP. RODOSOVICH: Madam Chair, Representative Knickerbocker. One question on the minority districts. One of the things that we take great pride in putting our package together is that we consulted with a number of members, people of color, a number of groups, NAACP–if this is the plan, members, that is submitted to the federal court, the NAACP, or at least Bill Davis of that organization, really doesn't think it does what you have told the members today. The one thing that I would like to point out also, members, is that the Native American district, I guess it is a

question, Representative Knickerbocker, in the Native American district that you have created that is better than ours in your opinion, does that include Senator Finn in that district or is he therefore displaced from that district?

REP. KNICKERBOCKER: Representative Rodosovich, Madam Speaker. Senator Finn is not matched up with anyone.

REP. RODOSOVICH: Madam Speaker and Representative Knickerbocker. Would Senator Finn be a resident of this Native American district?

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. I don't know.

(discussion on other topics omitted)

REP. JEFFERSON: Madam Speaker and members. I would like to speak to the amendment and some remarks that were made by Representative Knickerbocker. He implied by statement, although he did not say so, that this proposal has somewhat reached the approval of the NAACP. This absolutely is not true, and I would say that if this amendment were to pass, the NAACP would probably have them in federal court, have us in federal court the day the Governor signed the bill, and I will tell you why. If you look at District 56A, it takes in what is now within the city as the Fifth Ward and the Eighth Ward which have been represented by Black council members. These are the hearts of the two Black wards in the city. He spoke about the image of the wards in the city. That is true, but a ward is a single entity. A House seat is only part of a governmental body, and that is a senate seat. And

by combining what is now the Fifth Ward and the Eighth Ward into one senate seat, you give the influence of minority population to one senate seat. As it was laid out in the plan that was passed earlier, it shows a potential of electing minorities to two senate seats and four House seats. The proposal that is before you now limits that potential to one senate seat and two House seats, and that is compacting, and you would be in violation of federal law.

REP. KNICKERBOCKER: Madam Speaker, members. Rather than take the minority population and spread them over four districts, we have attempted to concentrate in two House districts and give minorities, Blacks in this case would be the largest minority group, in two House districts and a senate district, give them three opportunities to elect persons of color to the Minnesota Legislature. I did not say that this plan had the NAACP's approval, my point was in raising the issue in the article that the three wards which are smaller than a legislative district overlap the legislative district that we have drawn as the best opportunity to elect Blacks to the House and to the Senate. As I said before, I think this is the fact that we can do better for minorities and the fact that we do have an opportunity yet to revisit this issue in some sort of a bipartisan way. We can do a much better job for minorities in terms of increasing their chances of electing members, maybe even better than the amendment that is before us, but certainly better than the plan that we are proposing here this afternoon.

REP. JEFFERSON: Madam Speaker and members, Representative Knickerbocker. The statement you just made is also somewhat in error, that the federal court has shown that if you cannot create a majority of a particular racial minority in a district, then that

should no longer be a concern because you do then begin to impact this area and you limit the influence of that particular group and that is what you have done in this particular situation, you have limited the influence of the, in particular, Black vote to one senate seat instead of to the two senate seats that the proposal that we have already passed, has, and that is a problem. Thank you.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass,
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs. **PROCEDURAL ORDER NO. 7**

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

Our rulings on the motions argued February 17, 1992 are influenced by events occurring after the hearing. Most significantly, the United States District Court issued an order adopting plans for both legislative and congressional redistricting and enjoining Minnesota election officials from accepting filings or conducting elections except in conformity with that plan. Emison v. Growe, No. 4-91-202 (D. Minn. Feb. 19, 1992). On February 21, 1992, the panel received a collective submission of plaintiffs, defendants, and defendant-intervenors urging this panel to complete a congressional redistricting plan that would take effect if the federal court's congressional plan is reversed. The panel also received a submission from plaintiff-intervenors urging the panel to dismiss or to stay consideration of congressional redistricting. On March 2, 1992, the panel received a copy of a notice of appeal to the United States Supreme Court in Emison v. Growe. In light of these events, we address the status of this litigation and rule on the pending motions.

I

Legislative Redistricting

This panel, on November 21, 1991, issued Findings of Fact, Conclusions of Law, and Preliminary Order For Judgment On Legislative Redistricting. On December 5, 1991, two days after the parties' final comments on that plan, the federal court enjoined

all parties from implementing or enforcing any state court redistricting order and stayed its effectiveness. Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991). This order also specifically enjoined the parties from participating in the state proceedings and purportedly enjoined this panel from going forward on a legislative or congressional redistricting plan.

On December 9, 1991, subject to the federal panel's injunction, this panel entered a final and appealable partial summary judgment under Minn. R. Civ. P. 54.02 on the state legislative redistricting plan. Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel, Dec. 9, 1991).

On appeal, the United States Supreme Court vacated the injunction. Cotlow v. Emison, ____ U.S. ____, (Jan. 10, 1992) (No. 91-1084). Pursuant to this panel's order of January 31, 1992, final judgment as to state legislative redistricting was formally entered in Hennepin County District Court. So far as this panel is concerned, no additional actions on legislative redistricting need be taken.

II

Congressional Redistricting

The judicial task of reviewing Minnesota's legislative and congressional redistricting has required a divided approach. Because the legislature had not yet voted on a congressional redistricting plan at the end of its 1991 regular session, we deferred substantive consideration of the issue until legislative and executive consideration was complete.

In our Final Order For Legislative Redistricting, we ordered submission of proposed plans by January 17, 1992. This later date was selected to allow the legislature full opportunity to enact congressional redistricting legislation and to spare the parties potential conflict in complying with the federal panel's injunction.

When the special session ended without enactment of a congressional plan and the appeal before the Supreme Court was dismissed, this panel scheduled and conducted a procedural and motion hearing on February 17, 1992 to review the status of congressional redistricting and to resolve two pending motions. The first of these motions, brought by plaintiff-intervenors, challenges this court's authority to engage in congressional redistricting. The second, brought by plaintiffs and joined by the defendants and defendant-intervenors, requests the adoption of the congressional redistricting plan passed by the legislature but vetoed by the governor. For reasons stated below, we deny both motions.

A. Plaintiff-intervenor's Motion to Dismiss or Stay

Since the earliest cases recognizing the justiciability of redistricting issues, courts have universally acknowledged that the process of drawing political boundaries is, fundamentally, a legislative function. See Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691 (1962). When state political processes fail to redistrict in accordance with federal and state constitutional mandates, however, judicial intervention becomes both appropriate and necessary. Id. at 208-37, 82 S. Ct. at 705-20.

The jurisdiction of state as well as federal courts to preside over redistricting challenges has been recognized, and resolution of redistricting problems by the state judiciaries has been explicitly encouraged. Scott v. Germano, 381 U.S. 407, 85 S. Ct. 1525 (1965). As a general matter, nothing would preclude a state court from addressing congressional as well as legislative redistricting when the legislative process has failed to enact a constitutional plan. See, e.g., Wilson v. Eu, ___ Cal.2d ___ (Cal. Jan. 27, 1992); People v. Kerner, 32 Ill.2d 539, 208, N.E.2d 561 (1965).

The procedural posture of this case, however, must be considered. This panel is reviewing neither the effect of new

census data on the continuing validity of an existing, legislatively enacted redistricting plan, nor the constitutionality of a recently enacted plan, as was the case with legislative redistricting. The existing congressional districts were judicially drafted in 1982 and, plaintiff-intervenors contend, are therefore subject to the continuing and exclusive jurisdiction of the federal court. See LaComb v. Growe, 541 F. Supp. 145, 151, (D. Minn.), aff'd sub nom. Orwoll v. LaComb, 450 U.S. 966 (1982).

Notwithstanding this court's general jurisdiction over redistricting, the issue is whether, after an intervening census, a state court may review the continuing validity of a redistricting plan imposed by a federal court. We find no case law or authority directly on point.

The state of Minnesota is obligated under the state and federal Constitutions to redistrict congressional boundaries after each decennial census. U.S. Const. art. I, § 2; Minn. Const. art. IV, § 3; see also Wesberry v. Sanders, 376 U.S. 1, 84 S. Ct. 526 (1964). We have already determined that the Minnesota judiciary has a constitutional obligation to ensure compliance with these mandates.

All parties concede that, due to the population shifts of the past decade, the 1982 congressional redistricting plan no longer delineates districts of nearly equal population and is, therefore, unconstitutional. As it affects the voters, the source of an unconstitutional redistricting plan is not material. If the plan is invalid, a new plan must be adopted.

When a valid challenge has been brought, state courts cannot simply defer indefinitely to a potential federal court review. The inevitable population shifts and the intervening decennial census effectively limit the life of all redistricting plans. To ignore such facts and require state court abstention would unreasonably

restrict the state courts' authority to protect the people's voting rights under the state and federal Constitutions. Accordingly, we deny plaintiff-intervenor's motion to dismiss.

B. Jurisprudential considerations.

The federal panel has enjoined the implementation of any congressional plan other than its own. That order is now on appeal. Nonetheless, the existence of one court's review squarely raises the wisdom or the necessity of this panel proceeding farther. As Judge MacLaughlin observed in dissent in Emison, the people of this state should not be made to endure unnecessary court processes. Avoiding the potential confusion caused by multiple plans and minimizing costs are, therefore, significant concerns.

In an effort to resolve this litigation expeditiously, we have considered the feasibility of adopting the federal court's plan. Because no congressional plan was validly enacted into law, the latitude in formulating a court plan is significantly greater. The federal plan appears to have taken the submitted plans into account, although it most closely resembles the basic contours of the plan passed by the legislature but vetoed by the governor. The federal panel's plan also achieves nearly perfect population deviations.

Nevertheless, despite its apparent strengths, the federal panel's plan reaches population equality without sufficient regard for the preservation of municipal and county boundaries. This panel has been presented with a plan by the legislature that creates fifteen percent fewer splits while accomplishing the same population distribution.[1] Moreover, the boundaries created, particularly

[1] Plaintiffs have moved for the adoption of the legislature's plan, arguing (1) that it is the strongest evidence of state policy and is, therefore, entitled to deference; or, alternatively, (2) it is the best plan available. The vetoed plan is not state law and cannot be deemed to constitute state policy. See Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965). For this and other reasons set forth in this order, we deny the motion to adopt, in total, the legislature's plan.

those between the fourth and sixth districts, not only split municipalities unnecessarily but also lack compactness.[2]

Consequently, we decline to adopt the federal plan. Because Minnesota election officials are enjoined from accepting filings or conducting elections except in accordance with that plan, we also decline to impose, at this time, an alternative plan. We are fully prepared to release a congressional plan if and when such a course of action becomes appropriate.

BASED ON THE ENTIRE RECORD,
IT IS THEREFORE ORDERED:

1. Plaintiff-intervenors' motion to dismiss is denied.
2. Plaintiffs' motion to adopt immediately the congressional redistricting plan vetoed by the governor is denied.

Dated: March 3, 1992 **BY THE COURT**

Honorable Harriet Lansing
Honorable Kenneth J. Maas
Honorable William E. Walker

[2] We acknowledge that "compactness" is not constitutionally required. However, it has been adopted by this panel as a redistricting criterion and must be considered.